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***Review of the Draft JSC
“Financial Services Licensing
and Registration Instructions for
the Year 2004”***

Final Report

April 25, 2005

The author’s views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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Abstract

The Jordan Securities Commission (JSC) prepared the Draft “Financial Services Licensing and Registration Instructions for the Year of 2004” (the “Draft Instructions”) that will implement Articles (12/Q) and (47/B) of the Securities Law of 2002. When the internal JSC draft was completed, the JSC asked the AMIR Program and NASD to review and provide comments on the Draft Instructions. The Draft Instructions not only cover the licensing of securities firms and the registration of securities professionals, but also describe the prudential capital requirements, margin finance, and business conduct rules. NASD comments on the Draft Instructions were submitted separately and can be found in Appendix II of this report. The body of this report contains a series of 14 recommendations on important regulatory issues that arose during the NASD team’s visit to Jordan.

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Executive Summary

In 2002, the Kingdom of Jordan passed a new securities law, the Securities Law No. (76) for the Year 2002 (the “Law”), and during the past several years has been drafting a series of instructions that implement the Law. As part of this process, the Jordanian Securities Commission (JSC) prepared the Draft “Financial Services Licensing and Registration Instructions for the Year 2004” (the “Draft Instructions”) that implement Articles (12/Q) and (47/B) of the Law. When the internal JSC draft was completed, the AMIR program and the JSC asked NASD to review and provide comments on the Draft Instructions. The Draft Instructions not only cover the licensing of securities firms and the registration of securities professionals, but also describe the prudential capital requirements, margin finance, and business conduct rules. In early March, the NASD team submitted a version of the Draft Instructions, which included NASD comments and suggestions in the text (see Appendix II: NASD Comments on the Draft Instructions). The purpose of this short report is to comment on important regulatory issues that arose during the team’s visit to Jordan, which were beyond the scope of our review of the Draft Instructions.

This report is structured as a series of 14 recommendations, which are set forth below:

Recommendation 1: JSC should consider mandating that all firms conducting any type of securities business in Jordan, including soliciting Jordanian investors in the Kingdom, but conducting activities outside the Kingdom, obtain a license.

Recommendation 2: We recommend that the JSC rules clearly differentiate between, and establish clear rules for, margin and cash accounts, and that clients be permitted to engage in day trading¹ only in margin accounts under specific rules.

Recommendation 3: The rights of brokers to liquidate securities held in margin accounts should be reinforced to the extent necessary to make margin finance a viable business for Licensed Financial Brokers in Jordan.

Recommendation 4: We agree with Article (4/B) of the Draft Instructions, which states that a bank should be required to set up a subsidiary or wholly-owned company in order to practice brokerage and margin finance.

Recommendation 5. The JSC should publish instructions that specify the minimum standards for the creation and maintenance of records applicable to conducting a securities business as soon as possible.

¹ Buying and selling the same Amman Stock Exchange (ASE)-listed securities during a single trading session

Recommendation 6: We recommend that the Directives on Criteria for Solvency of Brokerage Companies (the “Directives”) apply also to Investment Managers.²

Recommendation 7: We recommend that the JSC rely on Article (10) of the Directives for financial monitoring and eliminate Article (8) from the Directives. Consequently, we further recommend that the JSC consider revising the definition of liquid assets in Article (9).

Recommendation 8: Uniform/Abbreviated Forms: The JSC should create/update standard forms for licensing, registering, and branch opening/closing and abbreviated versions of the forms for renewals.

Recommendation 9: We applaud the JSC for requiring firms to appoint a Compliance Officer, and recommend that the JSC require Compliance Officers to hold technical registrations covering all activities in which the Company engages.

Recommendation 10: We recommend that Managers³ be required to obtain all technical registrations required of the Registered Persons whom they supervise.

Recommendation 11: We recommend that the JSC’s next Certification and Training Program target Managers and Compliance Officers.

Recommendation 12: Given the rapid pace of change in the legal/regulatory environment and the introduction of new products and services in the Jordanian securities markets, we recommend that the JSC institute a continuing education requirement for all Registered Professionals holding technical registrations, including Compliance Officers and Managers.

Recommendation 13: We recommend that, during the one-year transition period for implementing the Draft Instructions, all applicants for registration be required to take the courses and exams required by the JSC (e.g., Broker and/or the Investment Adviser exam).

² Our comments on required levels of minimum paid-in capital, unconditional bank guarantees, and margin rules for license applicants can be found in Appendix II, NASD Comments on the Draft Instructions. Based on our visit, we also understand the JSC will be revising the Directives (see Appendix III for an English translation of the Directives) once it has completed the rules regarding the segregation of accounts. Recommendations 5 and 6 include some points that the JSC may wish to consider when revising the Directives.

³ Manager: Any registered person who is actively engaged in the management of the Company’s securities business, including but not limited to, supervision, marketing, the conduct of securities business, and/or the training of other Registered Persons associated with the Company. (Proposed definition of Manager that we have recommended in NASD Comments on the Draft Instructions (see Appendix II)).

Recommendation 14: In addition to the suggested minimum content standards that have been included in our comments on the Draft Instructions (see Appendix II), under this recommendation we have provided additional suggestions for minimum content standards that were requested during the course of the field visit.

In conclusion, in this short report we have set forth 14 recommendations on important regulatory issues that arose during the team’s visit to Jordan, but that are beyond the scope of our review of the Draft Instructions. We hope that NASD comments on the Draft Instructions (see Appendix II) have been useful to the JSC as it finalizes the Draft Instructions. We also hope that the additional recommendations contained in this report will provide some useful guidance for additional requirements that the JSC may choose to implement in the future.

I. Background

In 2002, the Kingdom of Jordan passed a new securities law, the Securities Law No. (76) for the Year 2002 (the “Law”), and during the past several years has been drafting a series of instructions that implement the Law. As part of this process, the Jordanian Securities Commission (JSC) prepared the Draft “Financial Services Licensing and Registration Instructions for the Year 2004” (the “Draft Instructions”) that implement Articles (12/Q) and (47/B) of the Law. When the internal JSC draft was completed, the AMIR program and the JSC asked NASD to review and provide comments on the Draft Instructions. The Draft Instructions not only cover the licensing of securities firms and the registration of securities professionals, but also describe the prudential capital requirements, margin finance, and business conduct rules. Therefore, NASD assembled a three-person team with extensive experience in numerous aspects of securities regulation for this assignment. The NASD team consisted of Chip Jones, a Vice President in NASD’s Registration and Disclosure Department, Mike Kulczak, a Securities Attorney with over 25 years of experience in securities regulation at NASD, NASDAQ, and the SEC, and Jeanne Balcom, Senior Director in NASD’s International Affairs & Services Department.

In preparation for its field visit, the NASD team reviewed the Draft Instructions and submitted a set of preliminary comments and requests for clarification. The JSC promptly responded to these comments and requests, allowing the team to better focus its on-site visit. In February, the team traveled to Jordan for one week to discuss JSC priorities and key elements of the Draft Instructions with the JSC Commissioners and to conduct a line-by-line review of the Draft Instructions with the Director and Staff of the JSC’s Licensing Department. Upon its return from Jordan, the team submitted in early March a version of the Draft Instructions, which included NASD comments and suggestions in the text (see Appendix II: NASD Comments on the Draft Instructions). The purpose of this short report is to comment on important regulatory issues that arose during the team’s visit to Jordan, but are not within the scope of our review of the Draft Instructions.

This report is structured as a series of 14 recommendations. For each, we present the recommendation, explain the reasons for our suggestions, and then discuss any issues related to the implementation of the recommendation.

II. Recommendations

Recommendation 1: JSC should consider mandating that all firms conducting any type of securities business in Jordan, including soliciting Jordanian investors in the Kingdom, but conducting activities outside the Kingdom, obtain a license.

Rationale: We believe that it is important for the JSC to require that all firms conducting any type of securities business in Jordan be licensed and fall under its oversight for the following reasons:

- The perpetration of a major fraud and/or money laundering scheme by any unlicensed intermediaries could significantly harm Jordanian investors and would also likely have a detrimental effect on how Jordanian investors perceive even the legitimate operators who are duly licensed to provide investment services.
- The absence of direct JSC jurisdiction over the unlicensed intermediaries means that the JSC does not have the right to monitor their activities via periodic reporting and/or on-site inspections.
- The expansion of activities by unlicensed intermediaries creates an unfair competitive situation for those practitioners who are duly licensed.

During the NASD team’s visit, we learned that certain unlicensed, securities intermediaries have emerged in Jordan. Their business consists of, among other things, facilitating trading by Jordanian citizens in foreign markets, and in instruments that could fall within the definition of “securities” contained in Article (3/B) of the Law. The practice of soliciting investment business across national borders is not a new phenomenon. Widespread access to the internet and the reduced costs of telecommunications have greatly facilitated questionable strategies that target investors outside the soliciting party’s home country to invest abroad in various tradable instruments. In several instances, these solicitations have turned out to be part of an orchestrated scheme to defraud unwitting investors. This is typically discovered, however, only after many investors have lost their funds and complained to their home country regulator. By then, it is usually too late to recover the lost funds via some form of enforcement action against the perpetrators.

We understand that the Office of the Prime Minister has convened a Committee to review and make recommendations regarding the regulatory status of these firms after receiving numerous complaints from Jordanian citizens who had lost money from dealings with these intermediaries. We further understand that, as part of this process, the JSC obtained a legal opinion (which we have not seen) that the Law did not provide adequate jurisdiction for the JSC to regulate the intermediaries/activities in question. Rather, the boundaries of the Law were deemed to limit the JSC’s jurisdiction to regulating intermediaries/Financial Services Companies whose in-country business involves securities offered locally and listed on the Amman Stock Exchange (ASE). Finally, it is our understanding that this Committee has not yet issued its final recommendations regarding regulatory action and that the JSC has not issued any instruction or official interpretation that would clarify exactly when the solicitation of Jordanian citizens to invest abroad would trigger the requirement for licensing of the soliciting party as Financial Broker,⁴ Dealer,⁵ Financial Adviser,⁶ or Financial Services Company⁷ pursuant to Article (47/A) of the Law.

⁴ Article (2) of the Law defines “Financial Broker” as “any person engaged in the business of buying and selling securities for the account of others.”

⁵ Article (2) of the Law defines “Dealer” as “any person engaged in the business of buying and selling securities directly for his own account and through the Market” (i.e., the ASE).

We respectfully submit that our reading of the Law would cause us to reach a different conclusion regarding the scope of the JSC’s jurisdiction in this matter. Our conclusion derives from a strict reading of the licensing requirement set forth in Article (47/A). We note that this provision contains an outright prohibition against performing certain defined activities that fall within the JSC’s regulatory jurisdiction unless the subject entity has (i) obtained an appropriate license from the JSC and (ii) registered the natural person (s) who actually perform the covered activities on the entity’s behalf (as required by Article (47/B)). Given the absolute nature of Article (47/A)’s prohibition, we note that the drafters of the Law authorized the Commission to grant exemptions from the licensing/registration requirements pursuant to Article (47/D). Paragraph D envisions that such exemptions would be granted via instructions issued by the JSC, “subject to the dictates of public interest.” We would interpret this last proviso as requiring the JSC to justify the grant of any exemption from the licensing/registration regime upon finding that it is in the public interest to do so.⁸

In sum, we recommend that the JSC reconsider its policy stance on the regulation of any firm whose course of business is to solicit residents of Jordan to invest abroad, without the soliciting party’s submitting to the JSC’s jurisdiction by means of an entity license and registration of associated persons. If the JSC concludes that the Law simply does not reach such activities, then we would recommend seeking an appropriate amendment to specify the jurisdictional nexus needed to reach the subject activities. We regard this policy area a priority based on our understanding that some of these unlicensed intermediaries have already victimized certain Jordanian investors. These kinds of activities will only grow in the absence of effective oversight. A major fraud involving these unlicensed firms will likely have a negative spillover effect on how Jordanian investors view the local capital market.

On an interim basis, we would also recommend that the JSC -- perhaps in cooperation with the ASE -- consider intensifying efforts to educate investors on the potential risks of using unlicensed intermediaries and of transmitting funds in response to telephonic/internet solicitations originated by intermediaries who are not licensed by the JSC. We understand that the JSC has recently issued a press release in this regard, which we view as a very positive first step. We recommend that the JSC continue to educate

⁶ Article (2) of the Law defines “Financial Adviser” as “any person engaged in the business of providing advice with respect to securities investment to others for a fee, charge, or commission.”

⁷ Article (2) of the Law defines “Financial Services Company” as “any legal person engaged in the business of performing services as a Broker, Dealer, Investment Trustee, Investment Manager, Financial Adviser, Underwriter, or any combination of these functions, or another other service specified by the Commission pursuant to this Law and the regulations, instructions, and decisions issued pursuant thereto.”

⁸ Assuming that the JSC concludes that it has a legal basis to assert jurisdiction over a particular intermediary but decides to grant an exemption based on a request from the intermediary, the JSC might condition such an exemption on the intermediary’s providing certain periodic reports and consenting to the JSC’s ability to conduct on-site inspections of its operations. Such conditionalities could be necessary to satisfy the “public interest” proviso in Article (47/D).

investors in this regard through the web sites of the JSC and ASE, seminars for investors, and perhaps through some public service programs broadcast on local media.

Recommendation 2: We recommend that the JSC rules clearly differentiate between, and establish clear rules for, margin and cash accounts, and that clients be permitted to engage in day trading⁹ only in margin accounts under specific rules.

Rationale: The practice of day trading, without first depositing cash or other acceptable collateral, poses undue financial risk to the executing broker. This is the case even when the clients end the trading day without an open position. For example, when a client purchases securities at the opening of a session and liquidates this position on the same day at a loss, the executing broker must cover the price differential to ensure continuity of the settlement process. This occurs because a day-trading client is purchasing securities (on zero margin) without having to deposit some collateral, as would be the case with margin accounts, to offset the potential intra-day risk arising from the trades. If the client then defaults, the executing broker incurs an actual loss from the client’s day trading. If multiple defaults occur, the executing broker could become insolvent. Hence, it is important to consider regulating the practice of day trading as part of the overall regulatory structure for margin accounts.

In Jordan (as in the U.S.), we understand that day trading is a common practice among brokerage firm clients who wish to capture the potential trading profits from buying and selling exchange-listed securities in a single trading session. To mitigate the financial risks to brokers, we recommend formulating a regulatory structure that makes a clear distinction between clients’ cash and margin accounts, and the types of trading that may be done in these accounts. In the U.S., for example, in a cash account, it is permissible for a customer to acquire securities provided that: (i) he makes full payment from proceeds already in the account, or otherwise delivers payment by the settlement date; and (ii) he agrees to not sell the security out of the account before paying for it.¹⁰ It is also permissible, in a cash account, for a customer to sell securities, provided that: (i) the customer has already deposited the securities into the account, or (ii) he currently owns the securities and agrees to deposit them into the account on or before settlement date. Essentially all other types of transactions -- including day trading -- that involve an extension of credit to a client to purchase securities must occur through a designated margin account.

Similarly, we recommend that the JSC also restrict day trading to margin accounts and, given the nature of day trading, establish additional regulations that apply specifically to day trading. For guidance, we summarize below the NASD and New York Stock Exchange (NYSE) uniform regulations on margin requirements for day trading clients of

⁹ Buying and selling the same ASE-listed securities during a single trading session.

¹⁰ As a result, it is a violation for a client to purchase shares of ABC corp. in his cash account and resell them before settlement in order to generate the proceeds to pay for the initial transaction.

their member firms. These regulations are only illustrative. The JSC may wish to consider some aspects of these regulations when it begins to draft its own.

- The NASD and NYSE regulations apply to every “pattern day trader.” This means a customer that (a) buys and sells the same security on the same day (or sells short and then buys to cover the short on the same day) in a margin account and (b) does so at least four times over a period of five business days. Further, these day trades must account for more than 6% of the customer’s total trading activity for that five-day period.
- Once identified, a pattern day trader must have a minimum equity of \$25,000 in his margin account before effecting any day trades on a given day.¹¹ This minimum must be maintained at all times. If the equity falls below \$25,000, no more day trades can be effected for the account until the minimum is restored.
- Maintenance margin of 25% is computed against the cost of all the day trades (in equities) made by the client for a given day. Alternatively, if the trading customer had at least two day trades, his broker can elect to compute the maintenance margin against the highest dollar-amount open position that the customer held during that trading day.
- For each business day, there is also a “buying power” limit or maximum leverage factor of 4:1. This reflects the notion of a 25% maintenance margin requirement. Computing the actual limit for an account simply involves multiplying the equity in the account after the previous day’s close by 4.
- Margin calls are issued whenever a customer exceeds his buying power limit. The customer has five business days to satisfy a call. Until then, his leverage ratio is reduced to 2:1.

In sum, the U.S. scheme for regulating day trading attempts to balance the financial risks posed by the practice of day trading on margin against the legitimate desire of certain investors to profit from short term price swings in securities. Requiring a minimum level of equity in day traders’ margin accounts effectively recognizes the risks inherent in day trading while providing a cushion against the possibility of an outright default by a client vis-à-vis his broker. Therefore, it is the client’s commitment of his own resources that ultimately determines how much risk that he can shoulder in connection with day trading activities. This result is fair to the day trading customer and the broker who is willing to accommodate such trading. The JSC may want to consider some of these concepts when developing day trading regulations for Jordan.

¹¹ “Equity” means the customer’s ownership interest in the account. This amount is calculated by adding the current market value of all securities held “long” in the account and any credit balance, and then subtracting the current market value of all securities held “short” and any debit balance.

Recommendation 3: The rights of brokers to liquidate securities held in margin accounts should be reinforced to the extent necessary to make margin finance a viable business for Licensed Financial Brokers in Jordan.

Rationale: During the NASD team’s visit, concerns were expressed about the effectiveness of the Jordanian legal regime to protect a broker’s security interest, or “lien” on client securities that are held as collateral for a broker’s loaning a customer funds to purchase marginable securities. Without the ability to liquidate securities in the margin account if the client does not heed a margin call, Brokers would be taking undue financial risks in extending margin finance. Clients would also be encouraged to take on excessive financial risks. Therefore, it is in the public interest to ensure strict compliance with margin regulations by enabling the rapid liquidation of securities collateral consistent with the Draft Instructions. For this to occur, the Broker’s lien on the securities -- and the resulting right to liquidate the securities under the terms of the margin finance agreement -- must be fully enforceable in the Jordanian courts.

Articles (38) to (51) of the Draft Instructions (see Appendix II for further NASD comments on the Margin Finance provisions) set forth the core requirements for a Licensed Financial Broker to provide margin financing to interested customers. Among other things, the Draft Instructions provide that:

- A Licensed Financial Broker (Broker) shall open a special account -- designated as a Margin Finance Account -- for customers desiring financing to purchase eligible securities. *Article (42)*. A written Margin Finance Agreement must also define the rights/obligations between the Broker and his margin customer. *Article (41)*.
- A customer cannot have more than one Margin Finance Account at any one time. *Article (47)*.
- A Broker must open a Margin Finance Account for each margin customer at the Securities Depository Center (SDC); this action reflects the segregation of securities that collateralize margin loans. *Article (43)*.
- The Broker must collect the applicable initial margin before effecting a purchase transaction for a Margin Finance customer. *Article (49)*. The Broker also must monitor each Margin Finance Account for compliance with the applicable maintenance margin requirement, and issue a call for additional margin if the account falls below the maintenance requirement. *Article (50)*.
- If a client fails to deposit additional margin (within three business days) to satisfy the margin call, the broker shall liquidate sufficient securities to restore the customer’s compliance with the applicable maintenance margin. *Article (51)*.

- The purchases Securities shall be considered collateral for Margin Finance (Article (54)).

Taken together, the foregoing provisions convey the Commission’s intent to segregate margin transactions and the securities that collateralize them from other securities transactions that do not involve a margin loan. Creation of a special SDC account to hold a customer’s securities that collateralize a margin loan -- coupled with the Broker’s margin compliance obligations -- leads to the inevitable conclusion that the Broker must be able to liquidate margin securities if the customer does not deposit additional collateral to restore compliance with the Commission’s maintenance margin requirements. Without this regimented approach, the margin regulation cannot protect Brokers or their customers from incurring excessive financial risks.

We were advised that the legal rights stemming from a margin finance agreement, the segregation of securities serving as collateral at the SDC, and the explicit statement in the Draft Instructions that the securities are collateral for the financing by brokers, might not be sufficient to withstand a legal challenge in the event of a customer’s bankruptcy, tax delinquency, or some other claim/judgment that could arguably reach all of a customer’s assets. Although these were only hypothetical scenarios, we were asked to suggest possible strategies to foreclose a successful legal challenge.

First, we recommend that consideration be given to obtaining a legal opinion on the enforceability of a Broker’s lien in the Jordanian courts, provided that the lien was established in compliance with the Draft Instructions. Such an opinion might be obtained via a formal written request from the Commission to the Minister of Justice, or a government body charged with responsibility for interpreting or resolving apparent conflicts between existing laws.¹²

Second, it is important to assess the vulnerability of a broker’s lien/right to liquidate under the Jordanian code of commercial law that specifies how liens are created/enforced in relation to intangible personal property. In this regard, NASD recommends a focused review of the applicable commercial code, as well as pertinent provisions of national bankruptcy and tax laws, to determine the extent to which existing laws might create a security interest that would supersede that of a Broker who makes a margin loan.

As an illustration of possible approaches/concepts that might be considered by the JSC to strengthen the legal rights of Brokers to liquidate securities in accordance with the Draft Instructions, the legal framework for pledges of investment securities in the U.S. is instructive. Although the U.S. generally follows common law principles, the Uniform Commercial Code (UCC) has influenced substantially the individual state laws governing the enforceability of contracts and the transfer and pledging investment securities. UCC Sec. 8-320 specifically recognizes a process for transferring and/or pledging securities (whether certificated or un-certificated) held at a central depository. Basically, the

¹² In some countries, this body might be the Council of Ministers or a special committee of the Parliament.

securities must be on deposit with the depository, and parties to the pledge must provide written instructions to the depository indicating the identity and number of securities that are to be moved from the account of the pledgor to that of the pledgee. The books of the clearing corporation will be amended to indicate the existence of the pledge. However, the security interest in the collateral is not perfected (i.e., legally enforceable) until the pledgee gives value, e.g., by making the margin loan. This scenario is specifically recognized in order to standardize, under the contract laws of the various states, the process by which securities can be pledged as collateral for a loan.

In the U.S. (as in Jordan), a broker must set up a separate margin account for each margin customer and provide a written margin agreement. Regarding the rights of the broker as creditor, a broker’s agreement can specify that a lien exists over all cash and securities that the customer owns (currently or prospectively) and that come into the possession and control of the brokerage firm, as security for the discharge of any financial obligations that the customer may owe to the firm.¹³ Further, the contract may vest the firm with the discretion to sell securities owned by the customer to reduce or liquidate any obligations owed to the firm. In the case of margin calls, the agreement can specify that the client may be required to respond immediately to a margin call, under certain circumstances. Hence, the combination of specific contract language regarding creation of a lien and the legal framework of the UCC collectively support the security interests of brokers that engage in margin finance in the U.S.

In sum, we recommend that the JSC attempt to strengthen the broker’s lien of securities pledged as collateral in margin accounts, through amendments to the legal/regulatory framework or by obtaining written interpretation from appropriate government authorities that have the role of interpreting the law.

Recommendation 4: We agree with Article (4/B) of the Draft Instructions, which states that a bank should be required to set up a subsidiary or wholly-owned company in order to practice brokerage and margin finance.

The NASD team staunchly supports the JSC’s regulatory policy stance reflected in the Licensing Instructions. Clearly, we recognize that financial regulators in many countries have adopted the model of the so-called universal bank.¹⁴ From both a regulatory and a policy standpoint, however, we agree with the requirement set forth in the instructions that banks should be required to establish a subsidiary or wholly-owned company to engage in brokerage activities and margin finance.

Rationale: From a regulatory standpoint, we believe that the requirement for a bank to establish and license a separate entity to provide brokerage services achieves several

¹³ Cash dividends paid on shares held as collateral could be a source of cash used to cover a margin call.

¹⁴ Under that model, the legal entity licensed as a bank is also granted a license to conduct a broad range of securities activities, ranging from brokerage to underwriting. Hence, the universal bank itself acts as a provider of traditional banking services (e.g., deposit taking and loans) as well as the range of investment services permitted by its particular license.

positive results. First, the bank-affiliated and non-bank brokers will be subject to the same regulatory framework, which promotes competition. This extends to licensing and registration; financial solvency rules; maintenance of required books and records; adherence to specific conduct standards for dealings with customers; maintenance of a supervisory structure tailored to the unique demands of the securities business; and being subject to inspections and potential enforcement actions by a single regulator responsible for overseeing securities brokerages within Jordan. Essentially, the requirement for a separate legal entity achieves equivalence in conduct of business standards and accountability, in the event of non-compliance with applicable provisions of the Law and regulations. This separation also makes clear which Regulator (in this case, the JSC) is responsible for monitoring compliance with capital rules. To the extent that the Law creates private rights of action for clients who suffer losses stemming from securities law violations (e.g., Article (111)), there should be no question about the efficacy of these remedies against a bank-affiliated and a non-bank broker. Finally, any law on bank secrecy that restricts access to client records at a bank should not apply to records maintained by a licensed securities broker that happens to be a bank affiliate.

From a policy perspective, the placement of a bank’s securities activities into a separate legal entity will compel that entity to strive for profitability as a stand-alone business. Although the bank’s clientele may be a fertile source of potential customers, these clients must be solicited to open securities accounts and maintain them based on the quality of services provided. In any event, the professionals responsible for delivering these services will have satisfied the corresponding qualifications requirements that the JSC has established. Hence, there should be no diminution in the level of customer safeguards provided at bank-affiliated brokers.

In conclusion, given the present stage of Capital Market Development in Jordan, we would fully support the requirement of a separate subsidiary for banks that seek to engage in brokerage activities and margin finance activities.

Recommendation 5. The JSC should publish instructions that specify the minimum standards for the creation and maintenance of records applicable to conducting a securities business as soon as possible.

Rationale: Complete and accurate books and records are absolutely critical to the effective regulation and oversight of licensed firms and Registered Persons. We understand that the JSC has begun drafting books and records instructions, as required by Article (54) of the Law. We recommend that the JSC make issuing these instructions one of its highest priorities. Clear books and records instructions will facilitate the regulated firms’ compliance with the Law, regulations, instructions, and decisions related to the securities business. The preparation and maintenance of appropriate books and records allow firms to plan and manage their business activities and permit effective JSC oversight. By examining records, the JSC can determine whether Companies are in compliance with securities-related laws and rules, detect and investigate potential violations, and obtain evidence in order to pursue disciplinary action.

Based on our experience, we recommend that the JSC issue instructions that require that Companies prepare and maintain, as applicable, the following:

- Office Records:
 - Checkbooks, bank statements, cancelled checks, and cash reconciliations.
 - Copies of all bills (receivable or payable).
 - Records supporting the balances of all assets and liabilities and capital accounts and the amounts of revenue and expense.
 - Records itemizing the activities in and the balances of each client cash and margin account.
 - All written agreements related to the pursuit of the firm’s securities business as well as any ancillary activities.
 - Documentation of discretionary authority, powers of attorney, etc.
 - Financial statements/filings and back-up data.
- Transaction Records, where applicable:
 - Order tickets.
 - Confirmations.
 - Record of all purchases and sales.
 - Records of all transfers of securities.
 - Records of all receipts and disbursements of cash.
- Records that show the basis for or demonstrate the calculation of the performance or rate of return of any managed accounts or any securities recommendations published or distributed to those other than clients, where applicable (e.g., Financial Advisers and Investment Managers).
- Customer account records:
 - Written agreements.
 - Documentation that shows that account statements were sent to the clients.
 - Contact information updated annually.
 - Client objectives updated annually.
 - Separate cash and margin account records for each client.
 - Any legal documents associated with the account.
- Records with respect to Registered Persons:
 - Contact information.
 - Background information.
 - Compensation records.
 - Records of client complaints for each Registered Person.
- Client complaints to the Company.
- Internal office communications, including email.
- All external correspondence -- sent or received -- related to the securities business.
- Advertisement and sales literature.
- Organizational documents:
 - Articles of Incorporation.
 - By-laws.
 - Corporate or partnership documents.
- Regulatory reports.

- Disaster recovery plan, which includes preservation and back-up of essential records.
- Compliance and operational manuals.

In addition to these suggested content requirements, we have recommended in our Comments on Article (74/C) of the Draft “Financial Services Licensing and Registration Instructions” (see Appendix II), that the JSC establish a uniform time frame for retention of documents as follows: *All books, records, or documents produced by a Company in the course of practicing its Licensed activities shall be maintained for a period no less than five (5) years, and for the first three (3) years, be maintained in a readily accessible form and location.* As firms expand in size and types of business conducted, the JSC may consider revising the books and records instructions and requiring different timeframes for various subsets of the required records (e.g., back-up information such as cancelled checks, copies of bills, etc., may be held for three years and information such as customer account statements may continue to be kept for five years).

With regard to the form in which these records should be kept, we are in agreement with the language of Article (74/B) of the Draft Instructions that states:

The books and records mentioned in Paragraph (A) of this Article may be maintained either physically or electronically. In all cases the Company must ensure that:

- 1. Adequate, appropriate and preventive measures are taken against the risk of falsification of information and to ensure the safety thereof.*
- 2. The information and data shall be available accurately and clearly within a reasonable time to any person entitled to examine the records or have access thereto.*

It does not matter in what form, physical or electronic, the records are kept as long as they are protected from harm or manipulation and are easily accessible upon request by the JSC within a reasonable timeframe.

For further information on broker and dealer requirements in the U.S., see Appendix IV, Securities Exchange Act Rules 17a-3 and 17a-4, which govern the preparation and maintenance of books and records for licensed brokers and dealers.

Recommendation 6: We recommend that the Directives on Criteria for Solvency of Brokerage Companies (the “Directives”) apply also to Investment Managers.¹⁵

Rationale: We recommend that Investment Managers also be subject to the Directives. Investment Managers, by definition, have discretion over customer funds and assets. In this regard, Investment Managers operate similarly to brokers that have discretionary authority over client accounts. These entities engage in securities transactions on behalf or for the benefit of others and encounter market, credit, and operational risks, as well as pose credit and business risks to others. As a matter of practice, Investment Managers must have the ability to manage their risk exposures, the financial wherewithal to meet expected losses and liabilities, and the financial capacity to settle unanticipated obligations. Accordingly, along with Companies offering brokerage and margin finance services, we believe that Investment Managers should be subject to the financial and operational requirements outlined in the Directives.

Recommendation 7: We recommend that the JSC rely on Article (10) of the Directives for financial monitoring and eliminate Article (8) from the Directives. Consequently, we further recommend that the JSC consider revising the definition of liquid assets in Article (9).

Rationale: We believe that the ratio set forth as a requirement in Article (10) provides greater utility for regulatory purposes and is easier to calculate for both the Regulator and the licensed firms than that currently found in Article (8). The computation of adjusted current assets outlined in Article (8) requires a significant amount of judgment regarding the marketability and liquidity of the underlying assets. In the event of fluctuations in business volume over a sustained period, attempting to derive an amount of adjusted current assets is likely to be very time consuming. Such circumstances are also likely to make it difficult for regulatory staff to determine whether a Company has met these requirements. Further, we do not believe that Article (8) is necessary in light of the requirements already included in Article (10). Article (10) provides a baseline (prior year’s annual expenses) that is more easily measurable, and retains a “net capital” concept (the maintenance of sufficient liquid resources to meet on-going obligations). More importantly, we think Article (10) captures an element of overall business risk exposure by focusing on an entity’s operating costs and encourages regulators to determine whether Companies are recognizing their costs accurately and in a timely manner. In sum, we recommend eliminating Article (8) of the Directives and making Article (9) part of Article (11). Revising the Directives as recommended above will facilitate Company compliance as well as regulatory reviews to monitor such compliance.

¹⁵ Our comments on required levels of minimum paid-in capital, unconditional bank guarantees, and margin rules for license applicants can be found in Appendix II, NASD Comments on the Draft Instructions. Based on our visit, we also understand the JSC will be revising the Directives (see Appendix III for an English translation of the Directives) once it has completed the rules regarding the segregation of accounts. Recommendations 5 and 6 include some points that the JSC may wish to consider when revising the Directives.

In addition, we would like to suggest revisions in certain elements included in the computation of Liquid Assets found in Article (9). First, we recommend including receivables related to Margin Finance if they are adequately collateralized. A Broker would be reluctant to extend Margin Finance to a client if, after a week, the related receivable were excluded from liquid assets. This could significantly limit the potential growth of Margin Finance. Further, we recommend including unsecured receivables from qualified market participants (e.g., other licensed Companies) as part of regulatory capital if aged less than 30 to 60 days. Regarding inventory positions, only marketable securities, measured strictly in terms of market value, should be included in liquid assets. Securities that are not currently traded, for which actual transaction prices are not publicly and readily available, or which are not freely transferable should be excluded from Liquid Assets. Finally, other assets should be excluded since they are unlikely to result directly from a Company’s primary activities.

Recommendation 8: Uniform/Abbreviated Forms: The JSC should create/update standard forms for licensing, registering, and branch opening/closing and abbreviated versions of the forms for renewals.

Rationale: To enhance regulatory efficiency, we recommend including the required information for licensed firms or registered persons specified in Article (7) of the Draft Instructions and any additional information that may be required by the JSC in the future on a standard form(s). We understand that the JSC is in the process of updating the standard application forms for both licensing and registration. The JSC may also want to consider including in the Draft Instructions only the general categories of information required for licensing and registration and leaving the more detailed requirements for information/data to be provided to the JSC for the standard application forms. Using this approach, the JSC could amend the standard application form without having to amend the Instructions. We have commented on the specific requirements for licensing and registration in our comments on the Draft Instructions. (See Appendix II, Articles (4 through 8). The recommendation for creating standard forms also applies to the opening and closing of branches. (See Appendix II, comments on Draft Instructions Article (11) for our comments on requirements for opening a branch). For license and registration renewals we recommend creating an abbreviated renewal form.

Recommendation 9: We applaud the JSC for requiring firms to appoint a Compliance Officer, and recommend that the JSC require Compliance Officers to hold technical registrations covering all activities in which the Company engages.

Rationale: The Compliance Officer plays a very important role in the Company. As set forth in our Comments on Article (68) of the Draft Instructions (see Appendix II): *His primary duty is to implement procedures reasonably designed to ensure that the Company and its employees abide by the law, regulations, instructions, and decisions.* In order to be able to perform this function, the Compliance Officer needs to understand all of the technical aspects of the Company’s business and the corresponding rules and

requirements for all of the Registered Persons engaging in specific activities at his Company.

In the future, we recommend that a more advanced certification and training program be established for Compliance Officers and Managers. (See Recommendation No. 11 below.)

Many Compliance Officers face resistance from Registered Persons and Managers when trying to institute and enforce compliance procedures. Training of Brokers on compliance issues and procedures can help to mitigate this resistance. Ultimately, the Compliance Officer is an adviser to the Chief Executive, who is primarily and ultimately responsible for implementing effective procedures and ensuring compliance by Registered Persons. The JSC must also emphasize to the Companies that assigning blame to the Compliance Officer is not necessarily an acceptable defense for serious lapses in supervision. To emphasize the point that the Chief Executive, and not the Compliance Officer, bears ultimate responsibility for ensuring compliance with securities laws and rules, we believe that the JSC would have a legal basis to discipline Chief Executives in the circumstance of a serious failure to supervise.

See Appendix II for NASD Comments on the Draft Instructions for further comments on the function of the Compliance Officer.

Recommendation 10: We recommend that Managers¹⁶ be required to obtain all technical registrations required of the Registered Persons whom they supervise.

Rationale: Managers play an important role in Companies. They are the front line supervisors of securities activities and Registered Persons. In order to carry out their supervisory responsibilities and to ensure that the Company and Registered Persons comply with securities laws and rules, Managers must have an in-depth knowledge of the securities business and the laws, regulations, instructions, and decisions that govern this business.

According to Article (69/C) of the Draft Instructions, the responsibility for supervision falls to the Chief Executive, who is charged to *supervise the Compliance Officer, (the Managers), and all other Registered Persons in a manner reasonably designed to ensure that they perform their activities in accordance with the Law and the regulations, instructions, and decisions issued pursuant thereto.* As Companies grow and expand, more Managers will be reporting to the Chief Executive. We recommend that the responsibility to supervise conferred upon the CEO also apply to these line Managers. The ultimate responsibility will still reside with the Chief Executive, but the Managers should also be responsible for supervision. The ASE Code of Ethics has even stronger

¹⁶ Manager: Any registered person who is actively engaged in the management of the Company’s securities business, including but not limited to, supervision, marketing, the conduct of securities business, and/or the training of other Registered Persons associated with the Company. (Proposed definition of Manager that we have recommended in our Comments on the Draft Instructions (see Appendix II)).

language regarding managerial responsibility for violations committed by staff; according to Article 11: *The management of the member shall be fully responsible for the breaches of the regulations and directives committed by its staff.* In the U.S., the Managers (Supervisors) can be charged for “failure to supervise” if they do not reasonably perform their supervisory duties.

Given their supervisory responsibilities, we recommend that Managers be required to obtain all technical registrations (e.g., Brokerage, Investment Manager, etc.) for the businesses in which their Companies engage. For the future, we recommend that the JSC establish a more advanced certification and training program for Compliance Officers and Managers. (See Recommendation No. 11 below.)

Recommendation 11: We recommend that the JSC’s next Certification and Training Program target Managers and Compliance Officers.

Rationale: Compliance Officers are responsible for developing and implementing compliance procedures, and frontline Managers are responsible for supervising the conduct of the securities business and the activities of Registered Persons. In order to properly fulfill these responsibilities, Compliance Officers and Managers must have an in-depth knowledge of the laws, regulations, instructions, and decisions. Managers and Compliance Officers are not only responsible for their own behavior, but also are responsible for developing, advising on, and/or implementing procedures to ensure compliance with the laws and rules. Moreover, Managers must oversee the activities of other Registered Persons.

We recommend that once the JSC fully launches the Investment Adviser Training and Certification Program, the JSC then consider developing a training program and certification examination that targets Compliance Officers and Managers. In the meantime, we recommend that the JSC organize an intensive training seminar for the new Compliance Officers and Managers of Securities Firms.

All Compliance Officers and Supervisors (Managers) in the United States must pass the General Securities Principal Exam developed and administered by NASD. See Appendix V for the Outline for the General Securities Principal Qualification Examination (Test Series 24) for an example of types of content that might be appropriate for an examination for Compliance Officers and Managers.

Recommendation 12: Given the rapid pace of change in the legal/regulatory environment and the introduction of new products and services in the Jordanian securities markets, we recommend that the JSC institute a continuing education requirement for all Registered Professionals holding technical registrations, including Compliance Officers and Managers.

Rationale: Continuing education for all securities professionals is important, but it is even more critical for Registered Professionals in Jordan, given the rapid pace of changes in the marketplace and in the legal/regulatory environment. In this regard, the series of

Instructions corresponding with Law are in the process of being written and new services such as margin finance are being introduced. A broker who participated in the Broker Training and Certification Program one year ago already faces a changed regulatory environment today. The investment advisers who begin their training program later this year will face the same situation a year from now.

In order for Companies to fulfill their role as the first line in ensuring compliance with the rules of the marketplace, Registered Professionals in the securities business must be current on the legal/regulatory framework and the technical characteristics of the products available in the marketplace. In order to ensure that Registered Persons keep current, at a minimum, with the legal/regulatory framework, we recommend that the JSC institute a continuing education requirement for all Registered Persons who require technical registration.

We recommend that the JSC establish a mandatory yearly training seminar for all Registered Professionals with technical registrations that covers, at a minimum, changes in the legal/regulatory environment. In the short term, this program could be in the form of a 1-2 day seminar, which could be taught primarily by JSC staff and Senior Management of the Companies. All Registered Professionals, Managers, and Compliance Officers should be required to take this course. The JSC may also periodically consider offering seminars, or requiring the Companies to sponsor seminars on new products or services introduced into the marketplace. In the future, when all of the Instructions for the Law are in place, the JSC may want to change the Continuing Education training requirement from yearly to every 2-3 years. In the medium-term, the JSC may also want to consider developing a continuing education exam that Registered Professionals must pass to fulfill this requirement.

Recommendation 13: We recommend that, during the one-year transition period for implementing the Draft Instructions, all applicants for registration be required to take the courses and exams required by the JSC (e.g., Broker and/or the Investment Adviser exam).

Rationale: The JSC’s goal is to raise the standards of securities professionals in Jordan. Given the importance of the training and examination programs developed by the JSC to the integrity of the markets and the protection of Jordanian investors, we recommend that all applicants for registration be required to take the appropriate courses and exams.

If this is not possible immediately, all new applicants for registration should be required, at a minimum, to take the required courses and exams as pre-requisites to registration. In order to ease the transition to the new requirements for the current registration holders, the JSC may consider granting a time period (e.g., 1-2 years) during which the current Registered Persons must fulfill the registration requirements in one of three ways: taking the appropriate course and passing the required exam, auditing the required course, or taking and passing the final exam for the course.

Recommendation 14: In addition to the suggested minimum content standards that have been included in our comments on the Draft Instructions (see Appendix II), we have noted below additional suggestions for minimum content standards that were requested during the course of the field visit.

- a. Confirmations:
 - i. Identity of the security, price, and number of shares or units.
 - ii. Date and time of the transaction.
 - iii. Whether it was a purchase or sales transaction.
 - iv. Whether the broker or someone related to the broker has an interest or relation to the transaction that may pose a conflict of interest.
- b. Order Tickets: must be kept for all orders whether executed or unexecuted and should contain at a minimum:
 - i. Terms and conditions of the order or instructions or whether it was entered pursuant to discretionary power.
 - ii. The account for which it was entered.
 - iii. Time the order was received.¹⁷
 - iv. Time the order was submitted to the trading system.
 - v. The price at which it was executed.
 - vi. The time of execution.
 - vii. The identity of the Registered Person responsible for the account, if any.
 - viii. Any other person who entered or accepted an order on behalf of the customer.
- c. Branch opening standards (covered in Comments on the Draft Instructions, see Appendix II).
- d. Customer Account Records: should include as a minimum:
 - i. Customer’s name and residence.
 - ii. Customer I.D. number.
 - iii. Occupation and name of employer.
 - iv. Signature of Registered Person and Manager, or whoever approves the account.
 - v. For discretionary accounts:
 - 1. Prior written authorization from the client.
 - 2. The signature of each person authorized to exercise discretion over the account.
 - 3. The time that such discretion is given.
 - vi. Prior to making any recommendations the customer account information must contain:
 - 1. The client’s financial status.

¹⁷ To make sure that the Broker is promptly executing client transactions and to verify that he is not trading ahead of his clients, the order tickets must have the time the order was received.

2. The client’s tax status.
3. The client’s investment objectives.
4. Such other information used or considered to be reasonable in making recommendations to the customer.

e. Compliance Manuals.

Compliance Manuals should contain procedures reasonably designed to achieve compliance of the laws, regulations, instructions, and decisions. A manual should contain procedures for the supervision of each business the Company engages in, each of its Registered Persons, and each of the locations where the Company conducts business. This manual should clearly identify who has supervisory responsibilities for each line of business, each Registered Person, and each branch.

The Company should update the manual regularly to reflect any changes and inform the Registered Persons of any changes. With regard to each procedure, the manual should specify:

- Who is responsible for performing supervisory functions.
- What the supervisor is supposed to review (e.g., new account forms).
- How often the supervisor will conduct the review (e.g., daily, monthly, quarterly).
- How the supervisor will document the review (e.g., by initialing a document).

It is important for Companies not only to draft a Compliance Manual, but also to make sure that the Registered Persons are aware of these procedures, to update these procedures, and, most importantly, to make sure these procedures are implemented.

At a minimum, these supervisory procedures should address:

- Filing and updating of required regulatory forms.
- Required notifications to Regulators (e.g., material news).
- Advertising and sales literature.
- Sales activities of Registered Persons.
- Internal communications.
- Correspondence.
- Customer complaints.
- Distribution of Compliance Manual and amendments.
- Periodic reviews of business and supervisory systems/internal audit.
- Monitoring of Registered Persons:
 - Review qualifications.
 - Designation of a supervisor.
 - Monitor activities.
- Financial reporting.
- Maintenance of books and records.
- Securities-related activities:
 - New account review and approval.
 - Discretionary accounts.

- Securities trading activities of Registered Persons (i.e., Article (87) of the Draft Instructions).
- Client funds and securities.
- Review of customer accounts.
- Review of order tickets and confirmations.
- Trade reviews for potential violations:
 - Suitability.
 - Unauthorized trading.
 - Churning.
 - Insider trading.
 - Other.
- Products:
 - Fixed income.
 - Equities.
 - Investment company products.
 - Other.
- Other, as appropriate:
 - Underwriting activities.
 - Supervision of branch offices.

III. Conclusion

The purpose of this short report is to comment on important regulatory issues that arose during the team’s visit to Jordan, but that are not within the scope of our review of the Draft Instructions.

In this report we have set forth 14 recommendations for the JSC on a wide variety of topics, including:

- Unlicensed firms that are currently soliciting Jordanian investors and conducting international securities transactions.
- The rules for margin and cash accounts.
- A broker’s right to liquidate securities and cash in margin accounts should the value of the maintenance margin fall below the required level.
- The requirement that banks establish a subsidiary to be able to practice brokerage and margin finance.
- Books and records instructions.
- Directives on financial solvency.
- The use of standard forms.
- Registration requirements for Managers and Compliance Officers.
- Continuing education requirements for Registered Persons.
- Minimum content standards for confirmations, order tickets, client account records, and compliance manuals.

We hope that the recommendations provided previously in our comments on the Draft Instructions (see Appendix II) have been useful to the JSC as it finalizes the Draft Instructions. We also hope that some of the additional recommendations concerning the subjects noted above in this report will provide some useful guidance for additional requirements that the JSC may choose to implement in the future.

Appendices

Appendix I: Preliminary Comments on the Draft Instructions

Appendix II: NASD Comments on the Draft Instructions

Appendix III: Directives on Criteria For Solvency of Brokerage Companies Operating on the Stock Exchange: issued by virtue of the Executive Committee decision no. 2/95, dated 4/1/1995.

Appendix IV: SEC Rules 17a-3 and 17a-4 regarding records to be made and preserved by Brokers and Dealers.

Appendix V: Outline for the General Securities Principal Qualification Examination (Test Series 24)

Appendix I

NASD Preliminary Comments/Questions on Draft Regulation Entitled:

Financial Services Licensing and Registration Instructions for the Year 2004

(January 5, 2005)

I. Introduction

Below are a series of comments/questions on the substance of the draft regulations pertaining to licensing and registration of entities/persons conducting securities-related activities in Jordan. Generally, our comments/questions seek to clarify the rationale for various provisions and to ensure consistency of the regulations in achieving the regulatory benefits of a modern regime for licensing/registrations persons involved in the securities industry.

Once we receive clarification from the JSC on minimum capital requirements for different categories of licensees under the proposed regulation, we envision sending an additional set of comments/clarifications in that area.

II. Section References and Specific Comments–

Article (2) A. – Custodian definition – Is a natural person prohibited from being a custodian?

Article (4) A. – Are partnerships considered to be judicial persons for purposes of the regulations?

Article (4) D. —This provision deals with minimum paid-in capital requirements for each category of licensing applicant. How have the minimum paid up capital levels been established and how is minimum capital calculated today? Is it a risk-based formula? A net capital formula?

- As to D.1, What is the rationale for requiring a higher standard of paid-in capital for a financial broker vs. a dealer? Would the numbers be lower if the applicant (whether seeking broker or dealer status) arranged to clear its transactions through another firm that offered clearing services?
- As to D. 3 and .5, What factors prompted the significant increases in paid in capital for applicants in the categories of (i) investment management (JD 1 mil. vs. current JD .5 mil), and (ii) underwriter (JD 10 mil vs. current JD 5 mil.)? Presumably, the JD 10 million underwriter is the manager or lead underwriter doing a firm commitment offering? Correct? (iv) Nonetheless, if a firm is already

licensed as a financial broker and simply wants to participate in an underwriting syndicate as a distributor (i.e., not undertaking to purchase shares that remain unsold), does that firm still need to meet the JD 10 million paid-in capital requirement? Or, would this firm only have to satisfy the lower standard of JD 100,000 in paid-in capital specified in Article (4) D.5.b? Please clarify the subset of underwriters to whom the D.5.b standard of JD 100,000 would apply.

Article (4) G. – Management is required to have an “Administrative Registration” [63.B.1 and 64.A]. What does Administrative Registration consist of and what does the JSC envision to be the requirements for Administrative Registration? Is there a potential need for a qualifying exam to obtain an administrative registration? Or, is administrative registration primarily a vehicle for ensuring the JSC’s jurisdiction over the registered persons? Please explain.

Article (4) I. - Are the unconditional bank guarantees meant to cover situations of ordinary negligence or breach of contract between a licensee and its client? Or, is the bank guarantee meant to be a source of funds to pay fines levied by the Jordan Securities Commission (JSC) or Amman Stock Exchange (ASE) or to provide restitution to customers in the event of misappropriation of customer funds/securities by an unscrupulous broker? How were the levels of required guarantees established for the different categories of entities? How is the guarantee accounted for in terms of calculating the firm’s paid-in capital or net equity? Or is it an “off balance sheet” item disclosed in a note to the audited financial statements? Is the maintenance of such guarantees an on-going condition of doing business in the particular area that a firm is licensed?

Article (4) J. – Under what specific circumstances can the JSC Board liquidate a company’s unconditional bank guarantee?

Article (5) – License cancellation procedure – Are the licensed persons provided with advanced notice? If so, is there an opportunity for hearing? Or is the license cancellation a summary power that the JSC can exercise?

Article (6) – Uniform Forms Issue-- Most of the required information for the licensing of firms that is specified in this article could be included on a uniform form(s). We suggest dispensing with the level of detail contained in the regulation and simply prescribing (in the regulation) that an applicant must file a particular standard form. The uniform form and its instructions would then specify the detailed requirements for information/data to be provided to the JSC. Using this approach, the form could be amended as needed by the JSC without having to amend the regulation itself. In a related vein, Article (99) (a “General Provision”) states that information shall be provide by a company to the JSC in written letters. By contrast Article (107) (another “General Provision”) indicates that the Commission will issue forms and instructions for obtaining information. Please explain the regulatory objectives behind Articles 99 and 107. On their face, they appear to conflict with one another.

Article (7) –Similar to the preceding comment on Article 6 regarding use of a uniform form for the licensing of firms, such a form could be designed to include an addendum to be completed by an applicant seeking to perform custody activities.

Article (10) (Opening of Branches) –Is the intent of Article 10 that each new branch be registered with the JSC, or does Article 10 simply envision the filing of a notice with the JSC and no subsequent action by the JSC to approve/disapprove the creation of a new branch? The final version of the rule should address this point clearly. Based on our experience, we would suggest that the opening of branches be handled by filing a separate, uniform form. If the JSC plans to grant affirmative approval of a licensee’s opening of a branch, what are the factors on which the JSC will base a decision to approve or decline to approve the opening of a branch? Presumably, such standards could be reflected in a standard form that the licensee would file with the JSC in order to gain approval. We suggest that such a filing requirement be added to Art. 10 and that the corresponding uniform form be developed. Does the JSC also have a regulatory interest in knowing about the closing of a licensee’s branch office? If so, we suggest requiring a separate filing.

Article (11) – What does this article add that is not covered by the existing companies’ law in Jordan? Is Article (11)’s purpose to indicate that a license held by a company being merged into or with another company, automatically transfers to the survivor? If that’s the intent, we suggest stating this more explicitly. Additionally, does it make a difference if the surviving company is one chartered under the companies’ law of another country? Or that the surviving company is a registered broker-dealer in another country, but not Jordan? We suggest that such details be clarified given the likelihood of increased cross-border activities.

Article (12) - If a company is licensed in Jordan strictly to perform brokerage activities, and such company trades for its own account, but only in markets outside of Jordan, does this Jordanian brokerage company still need to have a dealer license from the JSC to effect these proprietary trades (e.g., through a foreign intermediary or affiliate) outside Jordan?

Article (15) - Does the “separate account requirement” for each customer also mean the creation of “cash” and “margin” accounts for a single client that may wish to buy some securities on margin while paying cash for others? If so, perhaps there should be a cross reference to Article (45) (which deals with the opening of a margin account by a licensed broker at the central depository.) Can the Article 15 requirement for “separate accounts” also be read to mean that a registered broker can never enter into a joint trading account with one of his customers? If that is also an intended result, we suggest stating this explicitly.

Article (16) – On its face, it appears that this provision would prohibit a Financial Broker from trading as principal with his clients. Is this the case? If so, does this also apply if the broker also holds a license as a dealer? Does this also apply if the licensed broker is trading as principal (presumably with a dealer license) with his client and the subject

security is a foreign security that is not a security of a Public Issuer? In addition, Article 16 might be read to prohibit otherwise legitimate repurchase transactions between a broker and its client. Accordingly, the JSC may want to create a safe harbor for these types of transactions. See also Article (58)

Article (17) B. – Does every transaction with a Financial Broker have to be authorized in writing? Are verbal/telephone orders prohibited? Must a client first file a written trading authorization with his broker before such customer can place (and the broker execute) a verbal order to buy or sell a security? Is a telefaxed message sent by a client and instructing his broker to buy/sell a security deemed to be acceptable as a written authorization to trade? Are these scenarios addressed elsewhere in the law or JSC regulations? Finally, we note that Article (63) C of the Securities Law specifically prohibits a licensed or registered person from disposing of a client's securities without said client's written authorization. Article (63) is makes no reference to purchase transactions for a client without the client's prior written authorization. Clearly, unauthorized purchase transactions should be prohibited as well. However, we question whether this result can be grounded on another provision of the Securities Law, besides Article (63).

Article (17) C. - Is “absolute authorization” a defined term? If so, the location of that definition should be cross-referenced. Is “absolute authorization” referring to granting a broker the discretion to buy/sell securities for the account of a client? If so, then Article (17) C. effectively outlaws discretionary accounts. Please confirm whether this is the intent of Article 17(C).

Article (18) – This article requires that the Financial Broker “keep proof thereof”, i.e., documentation of confirmation notices sent to clients. For how long must the “proof” be kept? For what period, i.e., 2, 5, 7 years and where? Must these records be easily accessible? The regulation that requires a broker to send transaction confirmations to its customers should include details as to the minimum content of such a confirmation. If these details are specified elsewhere e.g. in another regulation, then perhaps Article 18 is not necessary. Lastly, it should be made clear that this obligation extends to any principal transactions that a broker conducts with his client as contra party (where the broker is duly licensed to trade as a principal).

Article (21) – This provision references compliance with financial solvency standards approved by the JSC. What are those standards and where at they specified? If the standards already exist in another regulation, Article (21) should a cross-reference the relevant provision.

Article (22) – This provision requires submission of a notice (to the JSC) when a Financial Broker has taken on a new financial obligation. Can this notification be accomplished by amending a uniform form? Does this rule envision a materiality condition as to the new financial obligation? If so, this should be stated clearly.

Article (23) -This disclosure obligation (for a limited liability company licensed as a Financial Broker) could be incorporated into a standard licensing application form with appropriate instructions. Thus, when the event occurs, notice could be provided by filing an amendment to the standard application submitted (and approved) previously by the JSC (See also comments on Article (6)).

Article (28) – This section refers to a written agreement between the client and the licensed person and should be cross-referenced with Article (63) of the Securities Law. We suggest also defining minimum content standards for such an agreement. This might be done by publishing a "model" agreement that reflects the minimum standards.

Article (29) F. – “Not speculate” – This phrase should be avoided unless it is clearly defined elsewhere. This may just be a translation issue or it may need to be clarified. Since all investment decisions entail acceptance of some degree of risk, the US (and other jurisdictions) often refer to the concept of *suitability* when describing whether a particular investment strategy is appropriate for a given client, in light of his/her investment objectives, current income, and tolerance for risk taking.

Article (30) A. 5. – The client’s risk tolerance and account objectives should be captured in the written agreement signed between the client and the Licensed Person at the time the account is established or opened; e.g., only stocks that pay dividends, etc. See also comments on Article (28).

Article (34) – Can you provide examples of how a financial advisor might be paid with commissions? We would also like your views on this practice.

Article (35) – Shouldn’t the Financial Advisor also be required to disclose conflicts of interest? Shouldn’t this concept also extend to the Financial Brokers and Underwriters as well? Please consider.

Article (41) - Why is it necessary for an applicant seeking to engage in margin financing to be licensed both as a financial broker and a dealer? Why can’t a “pure” broker extend margin financing? Are banks that conduct securities business through a separate department (i.e., not through a separate Jordanian subsidiary) also required to seek this license before extending margin financing to their securities clients? If banks without a securities subsidiary are exempt from this requirement, that exemption should be specified.

Article (43) - Does the reference to “profits and interests” include the margin purchaser’s right to receive stock splits, stock dividends, and cash dividends on securities bought on margin? If so, perhaps some clarifying language should be added.

Articles (46) and (47) - What benchmarks or “best practices” were considered in deriving these limits on margin financing? IOSCO?

Article (54) – This section falls within the “Margin” section. What is the rationale for this placement? Is the “Stock Exchange and the Center” qualification limited to just Margin? Compare to Article (13). If not, the JSC may want to consider moving this article. Can a duly qualified broker engage in margin financing of foreign securities that are not admitted to trade on the ASE? Must a broker obtain a separate authorization from the JSC to engage in this type of margin financing?

Article (56) - This provision states: “The licensed broker shall not finance the purchase of securities issued thereby...” Does this prohibition relate to any class of securities underwritten by the licensed broker? Or, is the prohibition limited to securities issued by the broker-dealer entity itself? Is it permissible under Article (56) for a broker-dealer to provide margin financing to a customer to buy shares of a subsidiary or parent corporation of the broker-dealer entity? Does it matter whether the subsidiary or parent company’s securities are traded exclusively outside of Jordan?

Article (63) B.1. and 2. —Are all Registered Persons also required to hold an Administrative Registration? Which categories of Registered Persons must also hold a Technical Registration?

Article (63) D. – Can a registered person work with two companies under common ownership; e.g., a bank that is licensed to perform multiple financial services activities?

Article (64) B.6. – We suggest placing the burden of registration and renewal fees on the firms employing the registered personnel. Based on our experience, such a system has proven to be quite effective.

Article (64) C. – How is the determination made that a person is of “high qualifications or sufficient practical experience”? Are there written guidelines authored by the JSC? If so, they should be cross-referenced at this point.

Article (66) – This renewal process can be very easily automated. Has the JSC given consideration to doing so?

Article (68) – These notifications can also be filed as amendments to a uniform registration application. The one-week time requirement seems to be rather short. The JSC may want to consider allowing 30 days for this notification.

Article (76) – How long must the books and records described in this section be maintained? If the retention standard is specified elsewhere, please insert a cross reference to the relevant provision.

Article (77) - Does the term “Company” refer to all companies providing one or more types of “Financial Services”, as defined in Article (2) A. of the draft regulation? Please clarify as this reference occurs in several other sections.

Articles (80)– (89) - Various 80 series Articles mention a duty to publicize specified information. What type of media will suffice to meet the “publicize” requirement? Is it sufficient for the company to post something on its web site? For what minimum period must that information be posted on the web site? Are other media contemplated for this purpose? Must the subject information be publicized in more than one language? All of these points should be clarified.

Article (89) – Does this provision mean that every brokerage employee must report monthly, every one of his/her trades to the Commission? Or, does it mean that the Companies must track all trading of their employees and produce records of such trading upon request? The burden of this reporting obligation should be clarified. Likewise, it is suggested that a standard form be developed for this purpose by the JSC.

III. Miscellaneous Comments/Questions

- A. Uniform applications for licensees and registrants can reduce the amount of language required in the regulations to specify requirements and allow JSC more flexibility in revising these requirements in the future. Wherever possible, these uniform forms should be developed by the JSC for electronic submission by firms and professionals. Ideally these electronic submissions can also be captured by JSC in a regulatory database. Going forward, it is also most efficient to record changes in a licensee’s/registrant’s base information by amending the original form (preferably, by electronic amendment).
- B. Fiduciary Responsibility – In reference to Articles 25 and 28 of the draft regulations, does the JSC want to specify the concept of a fiduciary obligation existing between a financial advisor and the clients for whom he manages a portfolio? This sort of legal relationship is recognized in the US and other jurisdictions as well. Basically in the US and elsewhere, this relationship arises from the law of agency, which specifies that an agent owes an absolute duty of loyalty to his client. Simply put, the agent must act in the best interests of his client and subordinate his personal interests to those of a client. If he fails to do so, the agent has breached his fiduciary obligation, and this gives the client the right to seek compensation for the breach in court or arbitration.
We note that Article (57) of the Securities Law (which applies to all licensed and registered persons and their employees) references the elements of loyalty owed to a client and dedication to achieving the client's best interests and investment objectives. This language is tantamount to a description of a fiduciary relationship, without using the specialized term "fiduciary". Therefore, it may be appropriate to cross-reference the Article 57 standards in any regulation that is designed to reinforce/clarify the duty owed by any category of licensed or registered person to the clients.
- C. Will the instructions related to margin financing and contained in the Draft Licensing and Registration Instructions replace *Margin Finance Instructions No. (1) of 2003*?

- D. Similarly, will the instructions related to Custody in the Draft Licensing and Registration Instructions replace *Custodian Licensing Instructions for the year 2003*.
- E. We suggest including a table of contents and an index in the final version of these regulations.

Appendix II

Draft

“Financial Services Licensing and Registration Instructions for the year 2004”

Issued by virtue of Articles (12/Q) and (47/B) of The Securities Law No. (76) for the year 2002

Article (1)

These Instructions shall be known as (Financial Services Licensing and Registration Instructions for the Year 2004), and shall come into effect as of the date determined by the Board.

Article (2)/ Rephrased

A. The words stated in these Instructions shall have the meanings assigned thereto hereunder, unless the context indicates otherwise:

The Law:	The Securities Law in force
The Commission:	The Securities Commission.
The Board:	The Board of Commissioners of the Commission.
The Chairman:	The Chairman of the Board.
Market	Amman Stock Exchange or any securities exchange licensed by the Commission
Center	Securities Depository Center
Financial Services:	The Financial Brokers, Dealers, Investment Trustees, Investment Managers, Financial Advisors or Underwriters and also Margin Finance activities or any other specified by the Commission pursuant to the Law and the regulations, instructions and decisions issued pursuant thereto.
Custodian:	Any judicial person providing custodial services

in respect of Securities.

The Company: Any judicial person providing one or more of the financial or custodial services .

Allied Company The company that controls another company or is controlled by the other company, or both are controlled by a third company

Dependent Company The company that is controlled by a mother company.

Branch Office: Any location (other than headquarters) where one or more Registered Persons of a Company regularly conduct securities business.

Registered Person: Any natural person who is a member of the Board of Directors or the Board of Executives, or who is a director, manager or employee of the Company, or any person occupying a similar position or performing similar duties at the Company, but shall not include any person whose performing only clerical duties, supporting services or activities unrelated to Securities.

Manager: Any registered person who is actively engaged in the management of the Company’s securities business, including but not limited to, supervision, marketing, the conduct of securities business, and/or the training of other Registered Persons associated with the Company.

Compliance Officer:	This is a Registered Person designated by the Company to administer its overall compliance program designed to reasonably achieve compliance with the applicable laws, regulations, instructions, decisions and policies that apply to the Company.
Net Equity	This is adjusted owner’s equity in accordance with the following formula: adjusted owner’s equity = paid up capital + statutory reserves + voluntary reserves + retained earnings + profit (loss) of the period + withdrawals.
Broker:	The Financial Broker or Dealer.
Initial Margin:	That percentage amount of the market value of the Securities to be purchased, which is paid by the Client.
Maintenance Margin:	The Client’s contribution to the market value of the Securities at any time after purchase.
Margin Finance Ceiling:	The sum total of the Margin Finance amounts granted to the clients of a Licensed Broker.
Publicizing:	Any publication by the Company in daily newspapers or on the website.

- B. The Words and phrases which are not defined in these Instructions shall have the meanings assigned thereto in the Securities Law, unless the context indicates otherwise.

Licensing Article (3)

- A. A company shall not practice any of the following activities without license from the Board :
1. Brokerage:
 - a. Financial Broker.

- b. Dealer.
 - 2. Investment Trusteeship.
 - 3. Investment Management.
 - 4. Financial Advisory .
 - 5. Underwriting.
 - 6. Margin Finance.
 - 7. Custody.
 - 8. Any other activities specified by the Board.
- B. The Company may practice the activities listed in Paragraph (A) of this Article only through natural persons registered by the Commission to practice such activities.

Article (4)

The licenses to practice the activities listed in Article (3.A) or renewals thereof , shall be subject to the following conditions:

- A. The license applicant shall be a bank, a public shareholding company, a private shareholding company or a limited liability company whose objectives must be restricted to financial services activities.
- B. (Rephrased) A license applicant, which is a bank, must practice brokerage and margin finance through a subsidiary or a wholly-owned company thereof.
- C. (Rephrased) The minimum paid-in capital of the license applicant for each requested activity shall be as follows:
 - 1. Brokerage.
 - a. Financial Broker: J.D. 500,000
 - b. Dealer: J.D. 250,000
 - 2. Investment Trusteeship: J.D. 30,000 *(This figure seems relatively high. Since the risks for the Investment Trustee are similar to those of a Financial Advisor, the JSC may want to consider reducing the level of capital to the same amount required for Financial Advisory.*
)
 - 3. Investment Management: J.D. 1,000,000

4. Financial Advisory : J.D. 30,000
5. Underwriting:
 - a. In case of practicing coverage to achieve purpose: J.D. 3,000,000
 - b. In case practicing coverage to exert care: J.D. 500,000 *(Since the risks are similar to that of a Broker, we recommend the same amount of paid-in capital for best efforts underwriting)*
6. Margin Finance: J.D. 1,000,000
7. Custody: J.D.1,000,000 *(This figure seems relatively high given the risks related to custodial activities in Jordan, particularly given the existence of the SDC)*
- D. . *(We recommend setting the capital amount at the level of the Company’s activity having the highest paid-in capital requirement, as we feel the additive approach, except in the case of Brokers and Dealers, would limit the ability of a Company to expand and compete with other Companies).*
- E. The license applicant’s management shall have the requisite experience, competence, know-how and good conduct to carry out its activities. By applying for a license, the applicant consents to the Commission’s obtaining any background information needed to substantiate the experience, competence, know-how, and good conduct of the applicant’s management.
- F. The licensing fees and the annual licensing renewal fees must be paid in accordance with the regulations, instructions and decisions in force.
- G. The license applicant/license holder must provide an unconditional bank guarantee *(We recommend that the level of bank guarantees be a percentage (i.e. 30%) of the paid-in capital requirements for each activity as these requirements reflect the risks involved in each activity)* to the order of the Commission in the amount specified by the Board, provided the amount of the guarantee for each activity shall not be less than the following:
 1. Broker and/or Dealer: JD 150,000.
 2. Investment Trusteeship: J.D. 100,000
 3. Investment Management: J.D. 250,000

4. Financial Advisory : J.D. 10,000
 6. Underwriting:
 - a. In case of purpose-specific coverage : J.D. 250,000
 - b. In case of due diligence coverage: J.D. 50,000
 6. Margin Finance: J.D. 250,000.-
 7. Custody: J.D. 250,000.-
- H. The guarantees shall constitute security for the Company’s obligations toward its clients who deal in Securities and for its compliance with the provisions of the Law and the regulations, instructions and decisions issued pursuant thereto. The Board may liquidate the guarantees and dispose thereof as it deems appropriate.

Article (5)

The net equity of the license applicant/holder shall constitute at least 75% of the applicants’ paid-in capital.

Article (6)

Every Company shall continue to comply with all the licensing requirements specified in these Instructions. The Board may cancel the license if the Company fails to meet any of the requirements.

Article (7)

The license application to practice any Financial Service or Custodial services shall be submitted to the Commission in writing on the form prescribed thereby, along with a statement attesting to the accuracy of the information stated therein and signed by the applicant. The application shall include or have attached therewith the following:

- A. The name and address of the applicant and the locations of its Branch Offices, if any.
- B. The company type and the number and date of its registration with the Companies Controller , in addition to the registration certificate which includes the names of the members of the Board of Directors or the Board of

Executives and the names of those authorized to sign on behalf of the company along with a sample of their signatures .

- C. The memorandum and articles of association.
- D. The nature of the applicant’s activity and the period of its practice.
- E. The names and addresses of the Senior Executive Managers and a resume of their professional background in the securities field, in addition to the residential and work addresses of the employees their professional capacities, job title and a photocopy of their identity cards.
- F. The members of the Board of Directors and Senior Executive Managers shall provide affidavits of no conviction of a felony, misdemeanor against honor or public order, and no declaration of bankruptcy.
- G. The names of the owners of the company and their individual shares, or the name of anyone owning (5%) or more of the applicant capital, in case the applicant is a shareholding company.
- H. A complete set of audited financials, if any, or interim financial statements covering a period of not more than twelve months and as of date not to exceed ninety days prior to the application submission.
- I. The name and address of the company’s auditor.
- J. The company’s organogram and business plan, including financial projections for the first 12 months of operations.
- K. The proposed written operational procedures for the business (e.g. opening client accounts).
- L. A list of the services to be offered .
- M. The basis for computing the commissions or the fees of the services charged to the clients.
- N. Evidence of paid-in capital and the appropriate banks guarantees.**
- O. . The draft form of the agreement with the client, account opening forms, the forms of client’s periodic account statements and any other the organizational statements necessary for the work progress . *(We recommend that the Company’s submit this information to the Commission. Draft agreements and account statements are a good indicator whether the license applicant understands the requirements and is prepared for launching the business)*

- P. Contractual arrangements with third parties necessary for the conduct of the license applicant’s business
- Q. . A compliance manual that specifies written procedures designed to provide adequate supervision of all aspects of the Company’s securities business.
- R. And any other information that the Commission determines to be necessary and appropriate to its review of the license applicant.

Article (8)

In addition to what is stated in Article (7) of these Instructions, the license applicant shall provide the Commission with the data related to the available experience and capabilities for practicing licensed activities, including available computer and electronic communications systems equipment, and other requirements necessary for efficient practice. *(We recommend that this requirement apply to all licensed activities. This requirement is particularly important for those activities that involve control of client funds and securities).*

Article (9)

- A. The Commission, as it deems necessary for verifying the applicant’s professional standing, may request the applicant to provide any additional information or data, including information related to its background,, professional record, or relationship with other companies. It may also ask for confirmation of any information or data provided thereto by an acknowledgement or otherwise.
- B. The Commission may take the necessary actions to verify the accuracy of the information stated in the application.
- C. The Board shall issue a decision granting or rejecting the license within sixty days from the date of submission of an application which contains all information required by the Commission.
- D. The Commission shall consider a license application to be withdrawn if the applicant has failed to submit all required information within six months of the original filing date.

Article (10)

- A. The license granted in accordance with these Instructions shall expire on the 31st day of December of each year.
- B. The Board may issue a new license for the succeeding year upon written application submitted for this purpose and after payment of the prescribed fees.
- C. The Commission may ask for any additional information upon submission of the application for the license renewal.
- D. Applications for license renewal shall be submitted no later than November 30th of the current year. If that date is a holiday, all applications must be filed by the last business day in November.¹⁸

Article (11)

The Company may open Branch Offices within or outside the Kingdom only after obtaining the Commission’s approval. The request to the Commission for opening a Branch Office shall, at a minimum, include:

- A. Address and contact information for the Branch Office
- B. Description of the business activities in which the Branch Office intends to engage
- C. Description of the facilities that will be utilized to carry out the proposed business activities and whether these facilities will be shared with another company.
- D. Whether the Branch Office was acquired from another Company and the name of that Company
- E. The estimated cost of opening the Branch Office.
- F. Detailed background information on the Branch Manager
- G. Information on all other Registered Persons who will be located at the Branch Office
- H. Company procedures for supervising the Branch Office

¹⁸ It is recommended that an abbreviated form be utilized for license renewals.

- I. And any other information that the Commission determines to be necessary and appropriate to its review of the request to open a Branch Office

(The JSC may want to create a standard branch office opening form that includes the information noted above, as well as a standard bank closing form.)

Brokerage

Article (12)

The Broker’s activities shall include:

1. Financial Broker: practices the activity of buying and selling Securities for a commission for the account of others.
2. Dealer: practices the activity of buying and selling Securities directly for his own account.

Article (13)

Brokers shall trade in Securities of a Public Issuer only through the Market, unless the Security is exempted from this condition by the Board.

Article (14)

The broker shall not sell Securities before verifying title thereto and that the Securities are not subject of any attachment, hypothecation or restriction on their transfer.

Article (15)

A separate account shall be opened by the Financial Broker for each of its clients for the purpose of trading in securities.

Article (16)

The Financial Broker shall not accept authorizations for selling or buying Securities except from his duly documented clients, in accordance with the applicable rules.

Article (17)

The Financial Broker shall notify his client about the following:

- A. Executed transactions for the client, promptly after these transactions take place;
- B. Unexecuted orders for which the client’s authorization has expired, promptly upon expiration of that authorization.
- C. In the event that the Financial Broker has an interest in the transaction to be conducted for the account of the client, or if it has any relation to the transaction which might lead to a conflict of interest, it shall be prohibited from executing said transaction, unless it brings said interest to the attention of the client and takes the appropriate action to safeguard the client's interest.
- C.

Article (18)

The Financial Broker shall not pay or credit any of his clients’ accounts for the price of any Securities prior to settlement.

Article (19)

The Financial Broker shall comply with the financial solvency standards approved by the Commission.

Article (20) Rephrased

All Companies shall, promptly upon their coming into effect, notify the Commission of, and provide it with any agreement, undertaking, or guarantee by the broker or its subsidiaries, or any of its managers, or any member of its Board of Directors or Board of Executives or any partners with banks, or any other parties which give or may give rise to a material financial obligation or which affect the broker’s financial position. *(We suggest broadening the scope of this article to include all Companies and moving this Article under the heading “Obligations of Companies”)*

Article (21) Rephrased

Any limited liability company practicing brokerage as well as its owners, partners, members of Board of Executives shall promptly provide the Commission with the name of any subsidiary thereof, and its memorandum and articles of association and any change thereto. *(We recommend the establishment of a uniform notification standard that includes notification obligations that apply to all Companies under the heading of “Obligations of Companies” in order to facilitate compliance by Companies.)*

Investment Trusteeship

Article (22)

The activities of the Investment Trustee shall include the follow-up and monitoring of the management of the clients’ securities to ensure their conformity with the investment principles and objectives of the client specified in the investment agreement concluded between the client and the Investment Manager in accordance with the provisions of the Law and the regulations, instructions and decisions issued pursuant thereto. These activities shall include also the practice of investment trusteeship on behalf of the investors of a Mutual Fund.

Article (23)

The Investment Trustee shall notify the Commission, the client and the client’s auditor, if any, of any violation of the investment agreement mentioned in Article 22. This includes informing them of any failure by the Investment Manager to provide the Trustee with the required reports for practicing his activity. The Investment trustee shall also request the Investment Manager to rectify the violation immediately, whereby failing such, the Investment Manager shall bear any resultant liabilities .

Article (24) Rephrased

At least quarterly, and upon receipt of the statement generated by the Investment Manager pursuant to Article 28, the Investment Trustee shall review and comment on the aforementioned statement and provide his comments to the client. If the client is the Mutual Fund, then the Investment Trustee shall report his comments to the Fund’s Board of Directors. .

Investment Management

Article (25)

The Investment Manager’s activities shall include management of Securities portfolios for others in accordance with the investment management agreement concluded with the client, which specifies the client’s investment policy and the Investment Manager’s authorities and duties. These activities shall also include the management of Mutual Funds. .

Article (26)

The Investment Manager shall manage the client’s Securities portfolio in accordance with the investment agreement concluded therewith or the prospectus in the case of Mutual Funds, and shall exert the necessary due diligence. .

Article (27) The Investment Manager shall undertake the following:

- A. segregate the client’s Securities from other Securities which he or any other client owns .
- B. keep separate accounts for each client or managed portfolio provided that each client’s account shall include the investments , interest and profits in addition to the client’s portfolio management expenses - if any - and the details of such .
- C. exclude the managed Securities portfolios values, returns of such Securities and any capital gains or losses resulting from trading, in the Investment Manager final accounts .
- D. Indicate the market value of the clients’ portfolios as a note within the financial statements.
- E. Not acquire any facilities against his clients’ portfolios, or use such portfolios as a security for his obligations.

Article (28)

- A. The Investment Manager shall provide his client (or the Board of Directors of the Mutual Fund) with a statement that includes the following:

1. details of the client’s portfolio, including: the identity or description of each security, the quantity held adjusted for unsettled purchases and sales as of the portfolio date, the market value of each security, and the cash balance as of the statement date;
2. selling and buying transactions executed, including transaction dates and details;
3. collected interest for the period, profits and dividends;
4. expenses by the investment manager for administering the client’s portfolio;
5. any event that may have a material effect on the client’s portfolio risk as expected by the Investment Manager.

B. The Investment Manager shall provide his client, upon request, with other documents and information related to managing his portfolio.

Article (29)

The Investment Manager shall keep records including the documents for every investment transaction and the details thereto. *(We recommend a unified standard for retention of books and records across all Companies. See Article 74 C. Further comment to be provided in body of draft report.)*

Article (30)

The Investment Manager shall duly address the complaints lodged by his client, keep a log of such complaints and their disposition, and a record detailing the disposition of each complaint, and promptly provide the Investment Trustee with copies thereof .

Article (31)

A Company shall not combine the Investment Trustee and the Investment Manager activities for the same account.

Financial Advice

Article (32) Rephrased

The Financial Advisory activities shall include the following for a fee or charge:

1. providing advice to the client pertaining to investment and dealing in Securities pursuant to the investment objectives.
2. providing advice to others, either directly or through publications or writings, pertaining to investment and dealing in Securities.

Article (33) Rephrased

All Companies shall refrain from guaranteeing/promising clients any amount of profit. (This Article applies to all Companies and Registered Persons in accordance with Article 57 of the Law. We suggest broadening the scope of this is article to include all Companies and moving it under the heading “Obligations of Companies”).)

Article (34) Rephrased

The Company shall not imply any untrue or misleading information or statements about the services rendered to its clients. (*We recommend that the scope of this Article be broadened to apply to all Companies and that it be moved under the heading “Obligations of Companies”*)

A.

Underwriting

Article (35) The Underwriter’s activities shall include administering the issuance and marketing of Securities on behalf of the Issuer, in addition to conducting due diligence and preparing the prospectuses and all other actions necessary for the issuance, registration and coverage of Securities.

Article (36) Rephrased

The Underwriter shall practice issue coverage pursuant to the underwriting - agreement concluded with the Issuer, as an agent of the Issuer for marketing and publicizing the issue in the media, through either of the following:

- A. Exertion of care: To exert utmost effort to attract buyers to the issue without giving any confirmation or commitment to sell a specific amount of the Securities to be issued; or
- B. Realization of a purpose: To exert utmost effort to attract buyers to the issue and to buy part or all of the Securities to be issued at the agreed price according to the underwriting agreement concluded with the Issuer. In the case where the Underwriter must purchase securities to conclude the issuance, it must use its best efforts to promptly resell the securities into the Market.

Article (37) A. The Underwriter shall, as part of his duties in assisting the Issuer in preparing the prospectus, seek the necessary assurances that all the information received from the Issuer is true, accurate and complete throughout the subscription period.

- B. Rephrased The Underwriter shall be responsible for displaying any amendments to the prospectus made by the Issuer during the subscription period.

Margin Finance

Article (38)

Margin Finance means the financing by the Broker of a part of the value of the Securities purchased on account of the client. The financing provided by the Broker is collateralized by the Securities in the Margin account. If the value of the stock drops sufficiently, the account holder will be required to deposit more cash or marginable securities in the Margin Account or sell a portion of the stock to meet the maintenance requirement.

Article (39) Rephrased

A license to practice Margin Finance shall be issued to the Company only subject to the following conditions:

- A. the Company must be licensed as a Financial Broker and have at least two years' brokerage experience; *(The JSC may wish to specify years of experience to ensure that only experienced Brokers are licensed to extend Margin Finance).*

- B. the Company shall not have violated the financial solvency standards during the six months preceding the license;
- C. the board must be satisfied that the Company possesses the technical and administrative capabilities to practice Margin Finance and manage the accounts related to such transactions.

Article (40))

The Board may amend the Margin Finance licensing conditions and requirements and practice procedures, whereby the Broker licensed to practice Margin Finance (“Licensed Broker”) shall rectify its position accordingly or liquidate the relevant accounts within the period specified by the Board.

Article (41)

A. The Margin Finance agreement shall specify the interest and any other charges payable to the Licensed Broker for this service. The agreement shall also provide for the client’s entitlement to distributions of profits, interest payments (in the case of bonds), and other forms of corporate distributions upon accrual, as well as the client’s right to vote at the general assembly meetings of the companies of which the client is shareholder

.B. The Margin Finance agreement shall also specify the following:

1. The Licensed Broker may hold as collateral for any client debit all of the purchased Securities in the Margin Account.
2. The client must maintain sufficient assets in his margin accounts to satisfy all margin and maintenance requirements.
3. If the Licensed Broker notifies the client that the value of his assets in the client’s margin account has fallen below the maintenance margin the client shall (time required should be specified here and should not exceed three days) deposit sufficient assets to comply with the required minimum maintenance margin.

C. The Margin Finance agreement shall also disclose, in clear language, the risks of margin financing that are assumed by the client. At a minimum, the disclosures shall indicate that:

1. The customer could lose more funds than he originally deposited in the margin account. For example, a decline in the value of the securities purchased on margin could result in the client being required to deposit additional funds

to avoid the forced sale of the margin securities and/or other securities previously deposited as collateral for the margin loan

2. The Licensed Broker can force the sale of any securities pledged as collateral for the margin loan, in the circumstance where the equity in the customer’s account falls below the applicable maintenance margin requirement and the customer fails to respond timely to a request for additional margin..

3. The customer is not entitled to choose which securities that have been pledged as collateral will be sold to meet a margin call.

4. Under no circumstance is the customer entitled to an extension of time on a margin call.

Article (42)

The Licensed Broker shall open a special account known as the Margin Finance Account for each of his clients who solicit such service. The Licensed Broker must obtain the Commission’s prior approval of the Broker’s standard account opening form and its standard Margin Finance agreement.

Article (43)

The Licensed Broker shall open a Margin Finance account with the Center for every client with whom the Broker deals in Margin Finance, and he shall comply with the Center’s instructions in this respect.

Article (44)

The Margin Finance ceiling shall not exceed double the amount of the broker’s net equity. *(This is a very conservative standard. The JSC may wish to consider raising this ceiling in 1-2 years, when there is more experience with margin in the Jordanian marketplace, in order not to unduly restrict the growth of margin finance.)*

Article (45)

The Margin Finance amounts granted to any client shall not exceed (10%) of the net equity of the Licensed Broker. (or. (500,000.) Jordanian Dinars, whichever is less.

Article (46)

The Board may order the Licensed Broker to cease granting additional financing or offering Margin Finance Accounts to new clients, or to refrain from buying Margin Financed Securities in any of the following cases:

- A. If the sum total of the Margin Finance amounts exceeds the ceiling specified in Article (46) of these Instructions.
- B. If the Licensed Broker violates any of the financial solvency standards issued by the Board.
- C. If the Board deems that the Licensed Broker does not possess the capacity to practice the Margin Finance.
- D. If the Licensed Broker commits a violation of the Law or the regulations, instructions and decisions issued pursuant thereto.

Article (47)

No person shall have more than one Margin Finance Account at any one time.

Article (48) Rephrased

The Maintenance Margin shall be computed by deducting the value of the financing granted to the client for the purpose of Margin Finance in addition to the interests due thereupon from the total market value of the Margin Financed Securities.

Article (49)

The Licensed Broker shall collect the Initial Margin from the client for his account, and in accordance with the rates specified from time to time by the Board, before purchasing any Securities [for the client]. The Licensed Broker shall also ensure that the Maintenance Margin in any Margin Finance account shall not, at any time, fall short of the minimum limit specified by the Board.

Article (50)

The Licensed Broker shall compute the Maintenance Margin for each account on a daily basis and shall notify the client immediately if the Maintenance Margin falls short of the

minimum limit allowed. The Broker shall require the client to cover any deficit within a maximum of three working days.

Article (51)

If the client fails to cover the deficit according to Article (50) of these Instructions, the Licensed Broker may sell such a part of the Margin Financed Securities that will restore the Maintenance Margin to the minimum level prescribed by the Board. *(It is critical in margin financing that the broker's has an unencumbered right to sell the margined securities . We will address this further in our written report)*

Article (52)

The Commission shall have the right to access all agreements concluded between the Licensed Broker and third parties related to the conduct of the securities business, including banks as well as access to the accounts and balances at the banks. The Licensed Broker shall authorize the Commission in writing to obtain any data or information it deems necessary directly from the banks and other third parties related to the conduct of the securities business. *(We suggest broadening the scope of this Article to include all Companies and moving this Article under the heading of “General Provisions”).*

Article (53)

The Licensed Broker shall not finance the purchase of securities issued by itself or an Allied or Dependent Company or hypothecate such securities to ensure any Margin Finance.

Article (54))

The purchased Securities shall be considered as collateral for Margin Finance, and the Licensed Broker shall not accept personal guarantees, bank guarantees or real estate mortgages as collateral for that finance.

Article (55) Rephrased

The Board shall specify from time to time according to the standards it sets , the Securities subject to Margin Finance and the percentage of Initial Margin and Maintenance Margin applicable to each.

Custody

Article (56)

- A. The Custodian practice shall include:
1. custody of the Client’s Securities;
 2. organize and maintain client’s records;
 3. transfer of Securities on behalf of his clients to the selling Financial Broker and receive Securities from the purchasing Financial Broker;
 4. , **(This provision is covered under Article (79 A.)**
 5. notify clients promptly of any actions taken by Securities Issuers whether related to the interests, dividends and other rights of such Securities;
 6. receive on the Clients’ behalf the interests, dividends, and rights pertaining to the clients’ Securities;
 7. vote by proxy on the client’s behalf at the Issuer’s ordinary and extraordinary general assemblies, according to the agreement concluded with each client; the votes on particular matters shall be cast according to the client’s specific instructions; and
 8. Any other activity approved by the Board as a Custodial activity.
- B. The Custodian’s activities shall be governed by a custody agreement concluded with the client. This custody agreement should specify, at a minimum:
1. that the assets in the clients’ account do not belong to the Custodian
 2. that the Custodian is not permitted to withdraw any of the clients assets from the account unless instructed to do so by the client
 3. that the Custodian will not claim any lien, right of retention or sale over the assets in the client’s accounts
 4. the procedures and authorities for giving and receiving instructions

Article (57)

The Custodian shall undertake the following:

- A. segregate activities and records related to the Custodial practice from other activities ;
- B. provide the options and measures necessary for safe keeping of the Securities and for their protection against theft, fire and any other risks, as needed.
- C. (Article (57 C) applies to all Companies and is already covered under Article (74 B.)

Article (58)

- A. The Custodian shall open Securities’ accounts for its clients according to the procedures in force at the Securities Depository Center.
- B. The Custodian shall not dispose of the Securities in its custody except pursuant to the provisions of the Law and the regulations, instructions and decisions issued , and according to the custody agreement concluded with the client.

Registration

Article (59)

- A. The Commission shall register natural persons who work for the Company in accordance with the provisions of the Law and the regulations, instructions and decisions issued pursuant thereto.
- B. The Registration includes:
 - 1. Administrative Registration: the registration granted to a natural person to practice administrative activities, which includes the members of the company’s Board of Directors or Board of Executives or any director, manager or employee thereof whose duties are related to Securities.
 - 2. Technical Registration: the registration granted to practice any of the following activities:
 - 1) Brokerage.
 - 2) Investment Trusteeship.
 - 3) Investment Management.

- 4) Financial Advisory .
 - 5) Underwriting.
 - 6) Custody.
 - 7) Any other activities determined by the Board.
- C. A natural person shall practice any of the activities mentioned in paragraph (B.2) of this Article only after being registered with the Commission.
- D. In addition to their administrative registration, Compliance Officers and Managers shall hold the appropriate technical registration for the lines of business that they oversee. *(We recommend that in the future a separate exam to qualify persons for these two categories of technical registration be instituted.)*
- E. A Registered Person shall practice any of the activities mentioned in paragraph (B.2) and (D) of this Article only through one Company.

Article (60)

- A. To practice Administrative Registration activities, a Natural Person shall meet the following conditions:
- 1. Be competent and of good reputation and manners.
 - 2. Satisfy any other conditions the Commission sets.
- B. To practice Technical Registration activities, a Natural Person shall obtain the following conditions:
- 1. be competent and of good reputation and manners ;¹⁹
 - 2. hold an undergraduate degree;
 - 3. pass the examinations set by the Commission successfully;
 - 4. participate in the courses approved by the Commission for acquiring the required registration;
 - 5. pay the registration fees and the fees of the annual renewal thereof;

¹⁹ As part of the process to verify the applicant’s reputation and manners, it is recommended that the JSC submit the names of all applicants seeking registration to the Anti-Corruption Office of the Intelligence Department. This process would be in addition to the current practice of checking with the criminal authorities.

6. satisfy any other conditions the Commission sets (*We recommend instituting continuing education requirements for all Registered Persons that have technical registrations*);
- B. A person of high qualifications or sufficient practical experience approved by the Board, shall be excluded from the requirements of items (3,4) stated in Paragraph (B) above.
- C. A person that has the technical license can practice administrative activities.

Article (61)

The Registered Person shall continue to comply with all the registration conditions specified by these Instructions or any other instructions or decisions issued by the Board, subject otherwise to the revocation of registration.

Article (62):

- A. The application for registration shall be submitted to the Commission in writing on the standard form prescribed thereby, along with all required information and attachments, and a statement attesting to the accuracy of the information stated therein and signed by the applicant.
- B. By applying for a license, the applicant consents to the Commission’s obtaining any background information need to substantiate the experience competence, know and good conduct of the applicant

Article (63)

- A. The Commission, as it deems necessary for verifying the applicant’s qualifications and professional standing, may request the applicant to provide any additional information or data it deems appropriate. It may also ask for confirmation of any information or data provided thereto.
- B. The Commission may take the necessary actions to verify the accuracy of the information stated in the application.

- C. The Board shall issue a decision granting or rejecting a registration within 30 days from the date of submission of an application, which contains all information required by the Commission.
- D. The Commission shall consider a registration application withdrawn if the applicant has failed to submit all required information within three months of the original filing date.

Article (64)

- A. The Registration granted pursuant to these Instructions shall expire on 31st of December of every year.²⁰
- B. The Board may issue a new registration for the next year upon submitting a written renewal application and after payment of the prescribed fees.
- C. The Board may ask for additional information upon submitting the Registration renewal application .
- D. The renewal application shall be submitted by November 30th of the current year. If that date is a holiday, then all renewal applications must be filed by the last business day in November.

Article (65)

The Registration shall be considered suspended upon the termination of the Registered Person’s employment by the Company or upon the suspension or cancellation of the Company’s license

Article (66)

The Registered Person must notify the Commission in writing within 7 days from the occurrence of the following:

²⁰ It is recommended that an abbreviated form be developed for renewals of all registrations.

- A. a change of his address or business address;
- B. his employment or termination thereof by the company, with statement of the reasons for termination ;
- C. the shortfall of any of the registration conditions; and/or
- D. if he becomes the subject of any civil or criminal action, or the subject of an investigation by a government authority, whether domestic or foreign.**

Article (67)

- A Registered Person shall abide by the principles of honour, integrity, fairness, honesty and standards of professional conduct and to strive constantly for the interest of the clients and the protection of their rights

Article (68) Rephrased

- A. The Company shall appoint a Compliance Officer, provided he holds the appropriate administrative and technical registrations with the Commission.
- B. The Compliance Officer’s primary duty is to implement procedures reasonably designed to ensure that the Company and its employees abide by the Law and Regulations, Instructions, and Decisions (“applicable laws/regulations”) issued pursuant thereto.
- C. To carry out his duty, the Compliance officer shall perform, at a minimum, the following tasks:
 - 1. acquire and maintain a clear understanding of the Company’s products and services that are regulated by the Commission;
 - 2. prepare and update a written compliance manual that sets forth the policies and procedures reasonably designed to ensure compliance with the applicable laws/regulations;
 - 3. develop and implement training programs reasonably designed to ensure that the Company’s Registered Persons understand the applicable laws/regulations as well as the corresponding internal compliance procedures;

4. advise Registered Persons of the Company as to the proper meaning and application of the applicable laws/regulations; and
 5. document the supervision of Registered Persons that is specified in the compliance manual; and
 6. promptly investigate potential violations by Registered Persons or a client of the Company, document the results of such investigations, and document any remedial and enforcement action taken by the Company.
- D. If the Compliance Officer is also assigned to perform other duties related to the Company’s business, those duties must not conflict with his duties as Compliance officer. Accordingly, it shall be the responsibility of the Company’s chief executive to ensure that there is no conflict of interest among the various duties of the Compliance Officer.

Article (69)

The Company’s Chief Executive shall perform the following:

- A. implement measures reasonably designed to ensure the realization of appropriate internal controls on the Company’s operations as well the Company’s compliance with the applicable provisions of the Law and the regulations, instructions and decisions issued pursuant thereto.
- B. provide the Commission, upon request, with the requested information and data in accordance with the provisions of this Law and the regulations, instructions and decisions issued pursuant thereto.
- C. supervise the Compliance Officer and all other Registered Persons in a manner reasonably designed to ensure that they perform their activities in accordance with the Law and the regulations, instructions and decisions issued pursuant thereto.

Article (70)

The Board of Directors or the Board of Executives in the company - as the case may be - shall be responsible for formulating and monitoring the Company’s general policies , and it shall, in particular, assume the following authorities and powers:

- A. taking the necessary measures to ensure the accuracy and completeness of any information provided to the Commission pursuant to the Law and the regulations, instructions and decisions issued pursuant thereto;
- B. approving and overseeing the implementation of a compliance manual and all related procedures reasonably designed to ensure the abidance by the provisions of the Law and any other legislations related to the Company’s business and activities.
- C. establishing the Company’s bylaws that specify the duties and authorities of its various staffmembers that ensure the administrative and financial control of its activities.

Obligations of Companies

Article (71)

- A. The Company shall formulate written procedures for its operations in dealing with clients and in handling clients funds and securities. These procedures shall conform to all applicable legal requirements. The Company shall also take appropriate measures to monitor for the consistent and proper application of such procedures in accordance with the Law and Regulations, Instructions and Decisions issued in this respect.
- B. The procedures mentioned in Paragraph (A) of this Article must specify the person authorized by the Company to be responsible for approving the opening and closing of clients’ accounts and for supervising the daily activities of each registered person..
- C. In connection with the opening of a customer account, the Company shall obtain sufficient information/documents to ensure the following:
 - 1. The client’s identity, financial solvency, contractual capacity and reputation; and

2. The client’s financial status, tax status, investment objectives, risk tolerance, and time horizon for potential investments. Such information is essential to determine the suitability of investment recommendations and securities transactions that might be provided to a customer.
 3. The foregoing information regard clients should be updated periodically to reflect the changing needs and objectives of individual clients.
- D. Separately, the Company shall maintain and update its compliance manual to reflect changes in its products/services offered to customers.

Article (72)

- A. The relationship between the client and the Company shall be governed by a written agreement for each line of business that the Company is licensed to perform. Such agreement shall conform with the provisions of the Law and the Regulations, Instructions and decisions issued pursuant thereto.
- B. The Company or its Registered Persons, when dealing in Securities for their clients, shall verify the validity of clients’ signatures after verifying their identities and contractual capacities.

Article (73)

- A. The Company shall disclose to the client in advance of contracting for any of its services, the total commissions and expenses the client will incur for such services.
- B. The Investment Manager may determine the appropriate fee or charge for its services on basis of the value of the client’s portfolio, the value of the transactions carried out for the client, as a percentage of the profits realized, or by any other method, subject to the client’s advance written approval.

Article (74)

- A. The Company shall maintain accounting books and records and other records necessary for conducting its activities in an organized and proper manner in accordance with international accounting standards, prepare the statements

adequately to reflect the reality of the Company’s financial status ,and comply with any special requirements determined by the Commission in this respect.²¹

- B. The books and records mentioned in Paragraph (A) of this Article may be maintained either physically or electronically. In all cases the Company must ensure that:
 - 1. Adequate, appropriate and preventive measure are taken against the risk of falsification of information and to ensure the safety thereof.
 - 3. The information and data shall be available accurately and clearly within a reasonable time to any person entitled to examine the records or have access thereto.
- C. All books, records, or documents produced by a Company in the course of practicing its Licensed activities shall be maintained for a period no less than five (5) years, and for the first three (3) years, be maintained in a readily accessible form and location. *(We understand that the Companies’ specific books and records requirements will be defined in a forthcoming instruction and we will provide recommendations in the final report.)*

Article (75)

- A. The Company shall not transfer or deal in the clients’ funds or securities except in accordance with the written agreement concluded therewith and pursuant to the provisions of the Law and the regulations, instructions and decisions issued pursuant thereto.
- B. The Company shall segregate its own funds and Securities from the client’s fund and Securities, which are a civil deposit therewith, in accordance with the conditions determined by the Board, which shall be included in the agreements concluded with the clients.
- C. Unless otherwise determined by the Board pursuant to Instructions issued thereby, the clients’ funds and securities held by the company shall not, in any

²¹ To implement this Article, it is essential that the Comisión specify, by an instruction or decisión, the types of books and records that must be maintained at a minimum, the permissible format, and the length of time for which such records must be maintained.

circumstances, be distributed to the Company’s creditors in the event of the Company’s liquidation or default in satisfying its obligations.

Article (76)

- A. Any person who intends to own (5%) or more of the **Company’s** capital shall submit to the Commission,, a written request stating therein the objectives behind the acquisition and any relevant facts that would enable the commission to determine whether such acquisition lead to:
1. a probable conflict of interests;
 2. the possible violation of the licensing conditions applicable thereto;
 - and/or
 3. an inadequate level of investor protection.
- B. The Commission shall issue a decision regarding the request within two weeks from the date of submission of complete information.
- C. The Company shall comply with the conditions imposed by the Commission in case of approval.

Article (77)

The Company shall provide in any publication, where in it recommends the purchase, sale or retention of a certain security, a detailed and clear statement of any direct or indirect interest in that security for itself or for any partner, director or any insider therein , including the following:

- A. The ownership of any of the aforementioned in this security or in any securities issued by the same Public Issuer.
- B. The commission or remuneration received or expected to by anyone of the aforementioned form anyone involved in any trading in this security.
- C. Any financial engagements or arrangements that any of the aforementioned might have with the Underwriter or anyone else in respect of this security.

Article (78)

When the Company recommends the purchase, sale or exchange of a security, in any circular, publication, advertisement, letter or other publications issued or published by it,

the **Company** shall mention clearly whether that **Company** or any of its officers or its director has assumed during the past twelve months the responsibility of an Underwriter for that security or has received, or expects to receive, any fees or payments from the Issuer of that security or an Allied or Dependent Company.

Article (79)

- A. The Company shall send an account statement to every client, no less than quarterly, indicating his balance of Securities and/or funds, and the details of any transactions made for him during that period.
- B. Upon request, the Company shall provide clients with a copy of its audited annual and semi-annual financial statements and notification of any changes in the membership of the Board of Directors or Board of executives, in or any change in its major shareholders or owners, or of any change in the members of its Executive Management.

Article (80)

The Company, with the exception of Custodians and Investment Trustees, shall formulate the criteria for fairness in allocating investment opportunities (e.g. procedures for disclosing information and recommendations to clients, for disseminating material changes in prior recommendations, and for taking investment action) to its clients. At least annually, copies of these criteria shall be provided to all clients and to the Commission.

Article (81)

The Company, with the exception of Custodians and Investment Trustees, shall disclose to the client if it retains any direct or indirect interest in any security prior to selling or purchasing such security for the client's account.

Article (82)

- A. Only the duly Licensed Persons and the Registered Persons shall appear before others, directly or indirectly, as a Licensed or Registered Person or represent himself as a Licensed or Registered Person in any of the media .
- B. No one shall claim, in oral or written form, that the Commission approves or attests to the validity of any acts , conduct or the soundness of the financial situation of any Licensed or Registered Person, or the merits of any Security or Issuer.

Article (83)

- A. Companies shall endeavor to maintain a professional relationship with one another based on fair competition and cooperation to develop the profession.
- B. The Company and its employees shall abide by the principles of honor, integrity, fairness, honesty and standards of professional conduct and shall work to promote and protect the clients interests .

Disclosure by Companies and Registered Persons

Article (84)

Subject to the disclosure requirements in force, the Company shall prepare an annual report within three months from the end of its fiscal year and shall provide the commission therewith .The annual report shall include the following:

- A. the Company’s Management report which shall include :
 - 1. the Company’s legal status and a description of its major activities;
 - 2. the Company’s accomplishments during the fiscal year supported by quantitative indicators ;

3. the Company’s competitive position and its share of the market for the preceding five years or from the date of its establishment, whichever is less;
 4. the Company’s capital and equity development and equity for the preceding five years or from the date of its establishment, whichever is less;
 5. an analysis of the Company’s financial status and the results of its activities during the fiscal year;
 6. the names of the members of the Board of Directors and the Board of Executives or the partners in the Company, as the case may be, and the Company’s registered persons and their qualifications, experience and job titles .
- B. The Company’s annual audited financial statements benchmarked with the previous year, and which shall include:
1. the balance sheet;
 2. the profit and loss account;
 3. the cash flow statement;
 4. explanatory notes to the financial statements.
- C. The auditors’ report on the Company’s annual financial statements, which includes an affirmation that the audit procedures are consistent with the international auditing standards.
- D. A declaration from the Company’s Chief Executive that according to his knowledge and belief, there are no substantial matters pending that would materially impact the Company’s continuity during the next fiscal year.

Article (85)

The Company shall publicize the audited annual financial statements as mentioned in Article (86) of these Instructions upon issuance of the aforementioned annual report .

Article (86)

The Company shall prepare and publicize a semi-annual report reviewed by its auditors within one month from the date of the end of that period. Further, it shall provide the Commission with copies thereof. Such report shall include the following financial statements:

1. the balance sheet;
2. the Profit and loss account;
3. the Cash flow statement;
4. the important explanatory notes to the financial statements.

Article (87)

The Board of Directors members or the Board of Executives members or the partners – as the case may be – and the employees in any of the Financial Brokerage Companies or their subsidiaries, shall provide the Commission with monthly reports about any dealing in Securities including sale or purchase thereof, by any of the aforementioned or their relatives within seven work days from the end of the month in which the dealing took place. *(We would recommend the following changes to Art. 87: (i) that the reporting obligation extend to all Companies (not just Financial Brokerage Companies); (ii) that the required reports cover any Registered Person associated with the Company or any other person’s account in which that Registered Person has a financial interest or controls; and (iii) that the Company’s Compliance Officer oversee the collection and transmittal of these reports to the Commission.)*

Article (88)

The Company shall publicize at the beginning of the year the names of its Registered Persons and the type of their registration, including the designation of those Registered Persons authorized to receive purchase and sale orders. Additionally, the Company shall promptly publicize the occurrence of the hiring or termination of any of its Registered Persons.

Article (89)

Each of the following persons shall notify the Commission in writing of its membership or representation on the Boards of Directors of any Public Issuer, and of any changes thereof within seven days from such occurrence:

- A. The Company.
- B. The Registered Person.
- C. Members of the Board of Directors of the Company and members of the Executive Management who are directly involved in the licensed activities.
- D. Members of the Board of Executives of the Company or the partners therein and members of the Executive Management who are directly involved in the licensed activities .

Article (90)

The Company shall notify the Commission immediately when it becomes aware of any potential material deterioration in its financial condition. (We recommend that the Commission also mandate an early warning notification when a Company approaches the limit of its capital requirement, e.g., within 10-15%.)

Article (91)

The Company shall comply with the Commission’s orders and shall provide the Commission with the following:

- A. A statement of the Company’s financial status , the liquidity amount , solvency, profits and administrative status, including the remunerations of the members of the Board of Directors and Executive Management.
- B. Statements of the Company’s subsidiaries final accounts and reports about their financial status . *(If this Article means upon request, we question the need for Article 91 at all, in light of the broad investigative powers granted to the*

Commission under Article 17 of the Law. If this information must be submitted periodically we recommend specifying the form and period of submission)

Article (92)

The Company, excluding Public Issuers, shall promptly notify the Commission in writing of any changes in its ownership along with the corresponding official documents.

Article (93)

The Company shall notify the Commission within seven days from the date of occurrence of the following:

- A. changes of the Company’s name and address inside the Kingdom or of any of its branches;
- B. changes of the Company’s objectives and/or articles of association;
- C. change of the Chairman or any other member of the Board of Directors or members of Senior Executive management, with a statement of reasons for the change, i.e., resignation, termination of service, discontinuation of work or any change in their title within the Company. ;
- D. the hiring or termination of any Registered Person, with statement of reasons in event of termination ;
- E. closure of the Company’s branch(es) in the Kingdom or abroad;
- F. the change of any of the Company’s branch managers or their business locations;;
- G. any material change in Company’s capital ; (“Capital” needs definition, e.g., paid-in capital, net equity, or owners’ equity.)
- H. the change of the Company’s auditor;
- I. any attachment or pledge of the Company’s assets;
- J. any sudden material losses that have affected the Company’s financial status, with statement of reasons;
- K. the Board of Directors or the Board of Executives decisions related to the starting of merger or voluntary liquidation; and
- L. any material legal proceeding by or against the Company (or any registered person), whether civil, criminal, or regulatory in nature.;

General Provisions

Article (94)

If the Commission finds that the Company is causing or facing a circumstance that threatens the stability or integrity of the Market or of the securities or funds of persons dealing therein, or if a shortfall in any of the licensing conditions stated in Article (4) of these Instructions, the Commission shall be entitled to take any of the following prompt measures it deems appropriate:

- A. Restrict, suspend, or revoke the license and registration for such period as it deems appropriate;
- B. Appoint a non-voting member on the company’s Board of Directors or Board of Executives, as the case may be, to act as an observer of these bodies for the period deemed appropriate by the Commission. Such member shall have the right to participate in the Board’s deliberations without voting, and to have recorded in the minutes of the meeting(s) his points of view on the decisions taken thereat; .
- C. To require the Company to increase the bank guarantees it had provided, (in accordance with Article (4)(I) of these Instructions) in the amounts deemed appropriate by the Commission; and/or
- D. To liquidate the provided guarantees.

Article (95)

The Commission may appoint an auditor other than the auditor appointed by the Company, if it finds this necessary, to conduct specific auditing operations within a specific period at the Company’s expense.

Article (96)

All the information and data submitted to the Commission by any Company or Registered Person must be by written letters duly signed by them, accompanied by the appropriate standard form (if any). In the case where information/data are submitted electronically, the Company/Registered Person must promptly submit the same by written letters as noted in the preceding sentence.

Article (97)

The Company’s relationship with others, including the clients, shall be pursuant to written agreements concluded with them..

Article (98)

The client may seek compensation from the Company for any resulting damages if the Company defaults on any of its obligations to the client, or takes any actions contrary to the client’s best interests, or otherwise commits an error or offence against the client’s interests. .

Article (99)

The Company shall investigate all complaints received from its client’s, document the results of such investigations, and document any actions taken in connection with the ultimate disposition of the complaint.

Article (100)

The Company, or the Registered Person or any officer or director or employee thereof, shall respond to the Commission’s request for hearing his statements on matters specified by the Commission and during the period determined thereby.

Article (101)

The Company’s auditor shall not be a debtor, creditor, or shareholder of the Company or of any of its subsidiaries, nor shall he be a guarantor of any of its debtors.

Article (102)

(We suggest moving Articles (96), (97), (99) under the heading Obligations of Companies”)

Article (103)

All Companies shall come into full compliance with the requirements set forth in these Instructions within one year from the effective date of these Instructions.

Companies will have one year from the effective date of the Instructions to come into compliance with the draft instructions. Given the importance of qualifications exams for securities professionals to the Jordanian marketplace, we recommend that during this transition period all new applicants for registration be required to take the required course and exam (e.g. Broker and/or the Investment Advisor exam) and that current holders of the license be given a time period (e.g. 1-2 years) during which they must either take the course and pass the required exam, audit the required course, or take and pass the final exam.

Article (104)

The Commission shall issue the standard forms necessary for the purposes of obtaining the information required pursuant to these Instructions.

Article (105)

The Licensing Instructions of activities of Financial Services Companies and Certified Financial Professionals No. (1) for the year 1999, and the Margin Finance Instructions No. (1) for the year 2003, and the Custodian Licensing Instructions No. (3) for the year 2003, shall be cancelled.

Article (106)

These Instructions shall be published in the Official Gazette and shall be advertised in the publicized in media and among those concerned.

Appendix III

Directives on Criteria for Solvency of Brokerage Companies Operating on the Stock Exchange issued by virtue of the Executive Committee decision no. 2/95, dated 4/1/1995

- Article 1: These Directives shall be called the "Directives on the Criteria for Solvency of Brokerage Companies Operating on the Stock Exchange."
- Article 2: The provisions of these Directives shall apply to public share holding companies specialized in brokerage activities, limited liability companies and general partnerships operating on the Stock Exchange.
- *Article 3: Brokers should collect the balances of accounts receivable (customer credit) resulting from buying securities, within one week of contracting credit.
- Article 4: The sum total of balances of accounts receivable (customer credit) resulting from buying and selling securities must not exceed 200% of owners' equity.
- Article 5: The sum total of balances of accounts payable (customer credit) resulting from buying and selling securities must not exceed 200% of owners' equity.

Article 6: The sum total of commitments of brokers must not exceed 250% of owners' equity.

Article 7:

- 1st. Brokers must show those amounts drawn from or deposited with the company by the partners, under a Current Account for the partners.
- 2nd. The sum total of withdrawals by all partners must not exceed 20% of the company's paid-in capital.

*Article 8: Brokers must keep liquid or cacheable assets for a short period (one week), that are sufficient to cover all short term commitments by at least 100%.

Article 9: In order to make the liquid amount referred to in Article 8 of these Directives, special settlements on current asset items shall be made on the following bases:

1. Cash at hand and deposits in banks:
This item shall be fully calculated. Deposits attached as security for specific purposes shall be excluded.
2. Accounts receivable (customer credit):
 - (a) The full amount of customer credit that has been contracted for more than one week shall be fully excluded.
 - (b) That part of the customer's credit which represents more than 10% of owner's equity shall be excluded.

(c) That part of the sum total of customer credit which represents more than 200% of owners' equity shall be excluded.

3. Securities portfolio

(a) Listed and traded stocks:

They shall be calculated at the market price, and the last closing price of the financial statements shall be adopted.

*(b) Suspended stocks:

They shall be fully excluded, and it shall be up to the Market's Management to determine which suspended stocks fall under this item.

* (c) Stocks that are traded on the tertiary market:

They shall be calculated at their nominal value, taking in account unpaid installments.

* (d) Stocks that are not listed in and not traded on the tertiary market:

They shall be fully excluded.

(e) Development bonds, treasury bills and bonds issued by governmental institutions:

They shall be calculated at their market value or, if that is not possible, at their nominal value.

* (f) Bonds issued by public share holding companies:

They shall be calculated at their market value, and if that is not possible, they shall be excluded from calculations.

* (g) Shareholding in non-public share holding companies:

They shall be fully excluded.

* (h) Attached securities:

They shall be fully excluded.

* (i) Securities placed as security for long term loans.

They shall be fully excluded.

* (j) 15% of the securities' portfolio shall be excluded, once all settlements referred to in sub-paragraphs (a - i) are made.

4. Other current assets:

Any current assets in the brokers' accounts which can be turned into cash within a short period shall be taken into account, and any current assets which cannot be turned into cash within a short period shall be excluded.

Article 10: Brokers must keep an adjusted amount of owners' equity of not less than 25% of the previous year's annual expenses.

- Article 11: In order to attain the adjusted amount of owners' equity, referred to in Article 10 of these Directives, the following amounts shall be deducted from the amount of owner's equity as shown on the brokers accounts:
- 1st. Net value of fixed assets.
 - 2nd. Net value of intangible assets.
 - 3rd. Net value of setting up expenses.
 - 4th. All exclusions from current assets referred to in Article 9 of these Directives.
- Article 12: Brokers must register all their assets in the company's name.
- Article 13: Brokers must notify the Commission of any mortgages or attachments on any of their assets as soon as such mortgage or attachment takes place, as well as inform it of any legal procedures affecting their process of work.
- Article 14:
- 1st. Brokers should submit to the Stock Exchange their annual and bi-annual financial statements, including the company's budget, statement of loss and profit and statement of trading, as audited by a chartered auditor, and according to standard forms prepared by the Stock Exchange for this purpose, on the 31st of March of the following year for annual statements and on the 31st of July of every year for bi-annual statements, at the latest.
 - 2nd. * Brokers should submit to the Stock Exchange the sub-mentioned financial statements, according to standard forms prepared by the Stock Exchange for this purpose, on a weekly and monthly bases, on the second business day of the following week

for weekly statements and by the end of the first month of the following month for monthly statements, at the latest.

- 1) A financial status list, and a statement of loss and profit.
- 2) A trial balance of accounts.
- 3) A list of securities portfolio.
- 4) A list of accounts receivable.
- 5) A list of accounts payable.

Article 15: The General Manager may issue any clarification note to explain any item of these Directives.

Article 16: These Directives shall enter into force as of the 1st of May, 1995.

*Amended by General Manager's decision no 59/95, of 16/11/1995.

Appendix IV

Securities Lawyer's Deskbook

published by The University of Cincinnati College of Law



College of Law

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Rule 17a-3 -- Records to Be Made by Certain Exchange Members, Brokers and Dealers [Effective until May 2, 2003.]

- a. Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to **section 15** of the Securities Exchange Act of 1934, as amended, shall make and keep current the following books and records relating to his business:
 1. Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

2. Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.
3. Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account.
4. Ledgers (or other records) reflecting the following:
 - i. Securities in transfer;
 - ii. Dividends and interest received;
 - iii. Securities borrowed and securities loaned;
 - iv. Moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in such collateral);
 - v. Securities failed to receive and failed to deliver;
 - vi. All long and all short securities record differences arising from the examination, count, verification and comparison pursuant to [Rule 17a-5](#), [Rule 17a-12](#), and [Rule 17a-13](#) (by date of examination, count, verification and comparison showing for each security the number of long or short count differences);
 - vii. Repurchase and reverse repurchase agreements;
5. A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker or dealer for his account or for the account of his customers or partners or others and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.
6. A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such member, broker or dealer, or any employee thereof, shall be so designated. The term "instruction" shall be deemed to include instructions between partners and employees of a member, broker or dealer. The term "time of entry" shall be deemed to mean the time when such

member, broker or dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

7. A memorandum of each purchase and sale for the account of such member, broker, or dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order, and the account in which it was entered.
8. Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer.
9. A record in respect of each cash and margin account with such member, broker or dealer indicating
 - i. the name and address of the beneficial owner of such account, and
 - ii. Except with respect to exempt employee benefit plan securities as defined in **Rule 14a-1(d)**, but only to the extent such securities are held by employee benefit plans established by the issuer of the securities, whether or not the beneficial owner of securities registered in the name of such members, brokers or dealers, or a registered clearing agency or its nominee objects to disclosure of his or her identity, address and securities positions to issuers, and
 - iii. in the case of a margin account, the signature of such owner;

Provided, That, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.
10. A record of all puts, calls, spreads, straddles and other options in which such member, broker or dealer has any direct or indirect interest or which such members, broker or dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved. An OTC derivatives dealer shall also keep a record of all eligible OTC derivative instruments as defined in **Rule 3b-13** in which the OTC derivatives dealer has any direct or indirect interest or which it has written or guaranteed, containing, at a minimum, an identification of the security or other instrument, the number of units involved, and the identity of the counterparty.
11. A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, pursuant to **Rule 15c3-1**; *Provided, however, (i) That such computation need not be made by any member, broker or dealer unconditionally exempt from Rule 15c3-1 by paragraph (b)(1) or (b)(3), thereof;*

and (ii) that any member of an exchange whose members are exempt from Rule 15c3-1 by paragraph (b)(2) thereof shall make a record of the computation of aggregate indebtedness and net capital as of the trial balance date in accordance with the capital rules of at least one of the exchanges therein listed of which he is a member. Such trial balances and computations shall be prepared currently at least once a month.

12.
 - i. A questionnaire or application for employment executed by each "associated person" (as hereinafter defined) of such member, broker or dealer, which questionnaire or application shall be approved in writing by an authorized representative of such member, broker or dealer and shall contain at least the following information with respect to such person:
 - a. His name, address, social security number, and the starting date of his employment or other association with the member, broker or dealer;
 - b. His date of birth;
 - c. A complete, consecutive statement of all his business connections for at least the preceding ten years, including whether the employment was part-time or full-time;
 - d. A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon him by any federal or state agency, or by any national securities exchange or national securities association, including any finding that he was a cause of any disciplinary action or had violated any law;
 - e. A record of any denial, suspension, expulsion or revocation of membership or registration of any member, broker or dealer with which he was associated in any capacity when such action was taken;
 - f. A record of any permanent or temporary injunction entered against him or any member, broker or dealer with which he was associated in any capacity at the time such injunction was entered;
 - g. A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing.

- h. A record of any other name or names by which he has been known or which he has used;

Provided, however, That if such associated person has been registered as a registered representative of such member, broker or dealer with, or his employment has been approved by, the National Association of Securities Dealers, Inc., or the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, the Pacific Coast Stock Exchange, or the Philadelphia-Baltimore Stock Exchange, then retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of this paragraph.

- ii. For purposes of this paragraph (a)(12) the term *associated person* shall mean a partner, officer, director, salesman, trader, manager, or any employee handling funds or securities or soliciting transactions or accounts for such member, broker or dealer.
13. Records required to be maintained pursuant to paragraph (d) of **Rule 17f-2**.
14. Copies of all Forms X-17F-1A filed pursuant to **Rule 17f-1**, all agreements between reporting institutions regarding registration or other aspects of Rule 17f-1, and all confirmations or other information received from the Commission or its designee as a result of inquiry.
15. Records required to be maintained pursuant to paragraph (e) of Rule 17f-2.
- 16.
- i. The following records regarding any internal broker-dealer system of which such a broker or dealer is the sponsor:
 - A. A record of the broker's or dealer's customers that have access to an internal broker-dealer system sponsored by such broker or dealer (identifying any affiliations between such customers and the broker or dealer);
 - B. Daily summaries of trading in the internal broker-dealer system, including:
 - 1. Securities for which transactions have been executed through use of such system; and
 - 2. Transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation):

- i. With respect to equity securities, stated in number of trades, number of shares, and total U.S. dollar value;
 - ii. With respect to debt securities, stated in total settlement value in U.S. dollars; and
 - iii. With respect to other securities, stated in number of trades, number of units of securities, and in dollar value, or other appropriate commonly used measure of value of such securities; and
 - C. Time-sequenced records of each transaction effected through the internal broker-dealer system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if internal broker-dealer system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the quotations of the broker or dealer sponsoring the system).
- ii. For purposes of paragraph (a) of this section, the term:
 - . *Internal broker-dealer system* shall mean any facility, other than a national securities exchange, an exchange exempt from registration based on limited volume, or an alternative trading system as defined in **Regulation ATS**, Rule 300 through Rule 303, that provides a mechanism, automated in full or in part, for collecting, receiving, disseminating, or displaying system orders and facilitating agreement to the basic terms of a purchase or sale of a security between a customer and the sponsor, or between two customers of the sponsor, through use of the internal broker-dealer system or through the broker or dealer sponsor of such system;
 - A. *Sponsor* shall mean any broker or dealer that organizes, operates, administers, or otherwise directly controls an internal broker-dealer trading system or, if the operator of the internal broker-dealer system is not a registered broker or dealer, any broker or dealer that, pursuant to contract, affiliation, or other agreement with the system operator, is involved on a regular basis with executing transactions in connection with use of the internal broker-dealer system, other than solely for its own account or as a customer with access to the internal broker-dealer system; and
 - B. *System order* means any order or other communication or indication submitted by any customer with access to the internal broker-dealer system for entry into a trading system announcing an interest in purchasing or selling a

security. The term "system order" does not include inquiries or indications of interest that are not entered into the internal broker-dealer system.

b.

1. This section shall not be deemed to require a member of a national securities exchange, a broker, or dealer who transacts a business in securities through the medium of any such member, or a broker or dealer registered pursuant to section 15 of the Act, to make or keep such records of transactions cleared for such member, broker, or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of Rule 17a-3 and Rule 17a-4: *Provided*, That the clearing broker or dealer has and maintains net capital of not less than \$ 25,000 and is otherwise in compliance with Rule 15c3-1 or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from Rule 15c3-1 by paragraph (b)(2) thereof.
2. This section shall not be deemed to require a member of a national securities exchange, a broker, or dealer who transacts a business in securities through the medium of any such member, or a broker or dealer registered pursuant to section 15 of the Act, to make or keep such records of transactions cleared for such member, broker or dealer by a bank as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of Rule 17a-3 and Rule 17a-4: *Provided*, That such member, broker, or dealer obtains from such bank an agreement in writing to the effect that the records made and kept by such bank are the property of the member, broker, or dealer: *And provided further*, That such bank files with the Commission a written undertaking in form acceptable to the Commission and signed by a duly authorized person, that such books and records are available for examination by representatives of the Commission as specified in section 17(a) of the Act, and that it will furnish to the Commission, upon demand, at its principal office in Washington, DC, or at any regional or district office of the Commission designated in such demand, true, correct, complete, and current copies of any or all of such records. Such undertaking shall include the following provisions:

The undersigned hereby undertakes to maintain and preserve on behalf of [BD] the books and records required to be maintained and preserved by [BD] pursuant to Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 and to permit examination of such books and records at any time or from time to time during business hours by examiners or other representatives of the Securities and Exchange Commission, and to furnish to said Commission at its principal office in Washington, DC, or at any regional or district office of said Commission specified in a demand made by or on behalf of said Commission for copies of books and records, true, correct, complete, and current copies of any or all, or any part, of such books and records. This undertaking shall be binding upon the undersigned, and the successors and assigns of the undersigned.

Nothing herein contained shall be deemed to relieve such member, broker, or dealer from the responsibility that such books and records be accurately maintained and preserved as specified in Rules 17a-3 and 17a-4.

- c. This section shall not be deemed to require a member of a national securities exchange, or a broker or dealer registered pursuant to [section 15](#) of the Securities Exchange Act of 1934 as amended, to make or keep such records as are required by paragraph (a) reflecting the sale of United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F and G.
- d. The records specified in paragraph (a) of this section shall not be required with respect to any cash transaction of \$ 100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.
- e. For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G-8 of the Municipal Securities Rulemaking Board will be deemed to be in compliance with this section.
- f. *Security futures products.* The provisions of this section shall not apply to security futures product transactions and positions in a futures account (as that term is defined in [Rule 15c3-3\(a\)\(15\)](#)); provided, that the Commodity Futures Trading Commission's recordkeeping rules apply to those transactions and positions.

Regulatory History

13 FR 8212, Dec. 22, 1948, 52 FR 22299, (1987), 53 FR 16406, (1988); 59 FR 5945, Feb. 9, 1994; 63 FR 59362, 59401, Nov. 3, 1998; 63 FR 70844, 70919, Dec. 22, 1998; 67 FR 58284, 58299, Sept. 13, 2002.

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Securities Lawyer's Deskbook

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General Rules and Regulations promulgated under the Securities Exchange Act of 1934

Rule 17a-4 -- Records to Be Preserved by Certain Exchange Members, Brokers and Dealers [Effective until May 2, 2003.]

- a. Every member, broker and dealer subject to **Rule 17a-3** shall preserve for a period of not less than 6 years, the first 2 years in an easily accessible place, all records required to be made pursuant to Rule 17a-3(a) (1), (2), (3), and (5).
- b. Every such broker and dealer shall preserve for a period of not less than 3 years, the first two years in an accessible place:
 1. All records required to be made pursuant to paragraphs (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), and (a)(16) of Rule 17a-3.
 2. All check books, bank statements, cancelled checks and cash reconciliations.
 3. All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such member, broker or dealer, as such.
 4. Originals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such.

5. All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such member, broker or dealer, as such.
6. All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.
7. All written agreements (or copies thereof) entered into by such member, broker or dealer relating to his business as such, including agreements with respect to any account.
8. Records which contain the following information in support of amounts included in the report prepared as of the audit date on Form X-17A-5 (§ 249.617 of this chapter) Part II or Part IIA or Part IIB and in annual audited financial statements required by **Rule 17a-5(d)** and **Rule 17a-12(b)**:
 - i. Money balance position, long or short, including description, quantity, price and valuation of each security including contractual commitments in customers' accounts, in cash and fully secured accounts, partly secured accounts, unsecured accounts, and in securities accounts payable to customers;
 - ii. Money balance and position, long or short, including description, quantity, price and valuation of each security including contractual commitments in non-customers' accounts, in cash and fully secured accounts, partly secured and unsecured accounts, and in securities accounts payable to non-customers;
 - iii. Position, long or short, including description, quantity, price and valuation of each security including contractual commitments included in the Computation of Net Capital as commitments, securities owned, securities owned not readily marketable, and other investments owned not readily marketable;
 - iv. Amount of secured demand note, description of collateral securing such secured demand note including quantity, price and valuation of each security and cash balance securing such secured demand note;
 - v. Description of futures commodity contracts, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and non-customers' accounts;
 - vi. Description of futures commodity contracts, contract value on trade date, market value, gain or loss and liquidating equity or deficit in trading and investment accounts;

- vii. Description, money balance, quantity, price and valuation of each spot commodity position or commitments in customers' and non-customers' accounts;
 - viii. Description, money balance, quantity, price and valuation of each spot commodity position or commitments in trading and investment accounts;
 - ix. Number of shares, description of security, exercise price, cost and market value of put and call options including short out of the money options having no market or exercise value, showing listed and unlisted put and call options separately;
 - x. Quantity, price, and valuation of each security underlying the haircut for undue concentration made in the Computation for Net Capital;
 - xi. Description, quantity, price and valuation of each security and commodity position or contractual commitment, long or short, in each joint account in which the broker or dealer has an interest, including each participant's interest and margin deposit;
 - xii. Description, settlement date, contract amount, quantity, market price, and valuation for each aged failed to deliver requiring a charge in the Computation of Net Capital pursuant to [Rule 15c3-1](#);
 - xiii. Detail relating to information for possession or control requirements under [Rule 15c3-3](#) and reported on the schedule in Part II or IIA of Form X-17A-5 (§ 249.617 of this chapter);
 - xiv. Detail of all items, not otherwise substantiated, which are charged or credited in the Computation of Net Capital pursuant to Rule 15c3-1, such as cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences and insurance claims receivable; and
 - xv. Other schedules which are specifically prescribed by the Commission as necessary to support information reported as required by [Rule 17a-5](#) and [Rule 17a-12](#).
9. The records required to be made pursuant to Rule 15c3-3(d)(4) and (o).
10. The records required to be made pursuant to [Rule 15c3-4](#) and the results of the periodic reviews conducted pursuant to Rule 15c3-4(d).
11. All notices relating to an internal broker-dealer system provided to the customers of the broker or dealer that sponsors such internal broker-dealer system, as defined in paragraph (a)(16)(ii)(A) of [Rule 17a-3](#). Notices, whether written or communicated through the internal broker-dealer trading system or other automated means,

shall be preserved under this paragraph (b)(11) if they are provided to all customers with access to an internal broker-dealer system, or to one or more classes of customers. Examples of notices to be preserved under this paragraph (b)(11) include, but are not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, and instructions pertaining to access to the internal broker-dealer system.

12. The records required to be made pursuant to **Rule 15c3-1e(c)(4)(vi)(D)** and E.

- c. Every such member, broker and dealer shall preserve for a period of not less than 6 years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.
- d. Every such member, broker and dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books.
- e. Every such member, broker and dealer shall maintain and preserve in an easily accessible place:
 - 1. All records required under paragraph (a)(12) of Rule 17a-3 until at least three years after the "associated person" has terminated his employment and any other connection with the member, broker or dealer.
 - 2. All records required under paragraph (a)(13) of Rule 17a-3 until at least three years after the termination of employment or association of those persons required by **Rule 17f-2** to be fingerprinted; and
 - 3. All records required pursuant to paragraph (a)(15) of Rule 17a-3 for the life of the enterprise.
 - 4. All records required pursuant to paragraph (a)(14) of Rule 17a-3 for three years.
- f. The records required to be maintained and preserved pursuant to Rule 17a-3 and Rule 17a-4 may be immediately produced or reproduced on "micrographic media" (as defined in this section) or by means of "electronic storage media" (as defined in this section) that meet the conditions set forth in this paragraph and be maintained and preserved for the required time in that form.
 - 1. For purposes of this section:
 - i. The term micrographic media means microfilm or microfiche, or any similar medium; and
 - ii. The term electronic storage media means any digital storage medium or system and, in the case of both paragraphs (f)(1)(i) and (f)(1)(ii) of this section, that meets the applicable conditions set forth in this paragraph (f).

2. If electronic storage media is used by a member, broker, or dealer, it shall comply with the following requirements:
 - i. The member, broker, or dealer must notify its examining authority designated pursuant to **section 17(d)** of the Act prior to employing electronic storage media. If employing any electronic storage media other than optical disk technology (including CD-ROM), the member, broker, or dealer must notify its designated examining authority at least 90 days prior to employing such storage media. In either case, the member, broker, or dealer must provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets the conditions set forth in this paragraph (f)(2).
 - ii. The electronic storage media must:
 - A. Preserve the records exclusively in a non-rewriteable, non-erasable format;
 - B. Verify automatically the quality and accuracy of the storage media recording process;
 - C. Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and
 - D. Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph (f) as required by the Commission or the self-regulatory organizations of which the member, broker, or dealer is a member.
3. If a member, broker, or dealer uses micrographic media or electronic storage media, it shall:
 - i. At all times have available, for examination by the staffs of the Commission and self-regulatory organizations of which it is a member, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images and for producing easily readable images.
 - ii. Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission or its representatives may request.
 - iii. Store separately from the original, a duplicate copy of the record stored on any medium acceptable under Rule 17a-4 for the time required.
 - iv. Organize and index accurately all information maintained on both original and any duplicate storage media.

- A. At all times, a member, broker, or dealer must be able to have such indexes available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.
 - B. Each index must be duplicated and the duplicate copies must be stored separately from the original copy of each index.
 - C. Original and duplicate indexes must be preserved for the time required for the indexed records.
- v. The member, broker, or dealer must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to **Rule 17a-3** and Rule 17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.
 - A. At all times, a member, broker, or dealer must be able to have the results of such audit system available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.
 - B. The audit results must be preserved for the time required for the audited records.
- vi. The member, broker, or dealer must maintain, keep current, and provide promptly upon request by the staffs of the Commission or the self-regulatory organizations of which the member, broker, or broker-dealer is a member all information necessary to access records and indexes stored on the electronic storage media; or place in escrow and keep current a copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes.
- vii. For every member, broker, or dealer exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party ("the undersigned"), who has access to and the ability to download information from the member's, broker's, or dealer's electronic storage media to any acceptable medium under this section, shall file with the designated examining authority for the member, broker, or dealer the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives, upon reasonable request, such information as is

deemed necessary by the Commission's or designee's staff to download information kept on the broker's or dealer's electronic storage media to any medium acceptable under Rule 17a-4.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the broker's or dealer's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the broker or dealer pursuant to Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 in a format acceptable to the Commission's staff or its designee. Such arrangements will provide specifically that in the event of a failure on the part of a broker or dealer to download the record into a readable format and after reasonable notice to the broker or dealer, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the Commission's staff or its designee may request.

- g. If a person who has been subject to Rule 17a-3 ceases to transact a business in securities directly with others than members of a national securities exchange, or ceases to transact a business in securities through the medium of a member of a national securities exchange, or ceases to be registered pursuant to **section 15** of the Securities Exchange Act of 1934 as amended, such person shall, for the remainder of the periods of time specified in this section, continue to preserve the records which he theretofore preserved pursuant to this section.
- h. For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G-9 of the Municipal Securities Rulemaking Board will be deemed to be in compliance with this section.
- i. If the records required to be maintained and preserved pursuant to the provisions of Rule 17a-3 and Rule 17a-4 are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to **Rule 17a-3(b)(2)**, or other recordkeeping service on behalf of the member, broker or dealer required to maintain and preserve such records, such outside entity shall file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the member, broker or dealer required to maintain and preserve such records and will be surrendered promptly on request of the member, broker or dealer and including the following provision:

With respect to any books and records maintained or preserved on behalf of [BD], the undersigned hereby

undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current hard copy of any or all or any part of such books and records.

Agreement with an outside entity shall not relieve such member, broker or dealer from the responsibility to prepare and maintain records as specified in this section or in Rule 17a-3.

- j. Every member, broker or dealer subject to this section shall furnish promptly to a representative of the Commission such legible, true and complete copies of those records of the member, broker or dealer, which are required to be preserved under this section, as are requested by the representative of the Commission.
- k. *Exchanges of futures for physical.*
 - 1. Except as provided in paragraph (k)(2) of this section, upon request of any designee or representative of the Commission or of any self-regulatory organization of which it is a member, every member, broker or dealer subject to this section shall request and obtain from its customers documentation regarding an exchange of security futures products for physical securities, including documentation of underlying cash transactions and exchanges. Upon receipt of such documentation, the member, broker or dealer shall promptly provide that documentation to the requesting designee or representative.
 - 2. This paragraph (k) does not apply to an underlying cash transaction(s) or exchange(s) that was effected through a member, broker or dealer registered with the Commission and is of a type required to be recorded pursuant to Rule 17a-3.

Regulatory History

13 FR 8212, Dec. 22, 1948; 62 FR 6469, 6473, Feb. 12, 1997; 63 FR 59362, 59401, Nov. 3, 1998; 63 FR 70844, 70919, Dec. 22, 1998, as corrected at 64 FR 13065, 13066, Mar. 17, 1999; 65 FR 13235, Mar. 13, 2000; 69 FR 34428, 34471, June 21, 2004.

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Appendix V

General Securities Principal Qualification Examination (Test Series 24) Study Outline

http://www.nasd.com/web/groups/corp_comm/documents/home_page/nasdw_011078.pdf